

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1179

Application for Review Dismissed

PROCEDURAL HISTORY: On April 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 72549). On April 30, 2014, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for May 14, 2014 at 3:30 p.m. On May 15, 2014, ALJ Francis issued Hearing Decision 14-UI-17671, dismissing claimant's request for hearing for failure to appear. Claimant filed a timely request to reopen the hearing. ALJ Kangas reviewed claimant's request and on June 18, 2014 issued Hearing Decision 14-UI-19867, denying claimant's request. On July 8, 2014, Hearing Decision 14-UI-19867 became final without an application for review having been filed. On July 9, 2014, claimant filed a late application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Claimant did not establish good cause to file an untimely application for review, and her application for review should be dismissed.

ORS 657.270(4) required claimant's application for review to be filed no later than July 8, 2014; it was filed on July 9, 2014, as shown by the postmarked date affixed to the envelope in which the application for review was mailed. OAR 471-041-0065(1)(b) (October 29, 2006) (if mailed, the filing date is the postmark date on the envelope in which the application for review was mailed).

OAR 471-041-0070 (October 29, 2006) provides:

(1) An application for review is timely if it is filed within 20 days of the date that OAH mailed the hearing decision sought to be reviewed. EAB shall dismiss a late application for review, unless the filing period is extended in accordance with this rule.

(2) The filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875.

(a) "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing.

Claimant explained on her application for review, "I have a disability. Fibromyalgia & get confused. Thought I had mailed this, then ran across it. Confusion forgetfulness is part of the medical disability."

We do not disbelieve claimant's assertion that she has a medical condition, symptoms of which may include confusion or forgetfulness. However, claimant's statement about the reasons she filed an untimely application for review does not establish that the untimely filing was caused by factors or circumstances beyond her reasonable control. Claimant did not, for example, explain what she did with the application for review form after receiving it, when she thought she had mailed it, why she thought she had mailed it, whether she double-checked that she had mailed it given that she knows she has a medical condition that causes confusion and forgetfulness, what steps she took to avoid becoming confused or forgetting to mail her application for review despite her medical condition, how and when she "ran across" the application for review form and learned she had not mailed it, or other such details that would show it was beyond her control to make a timely filing. Nor did claimant explain why she thought she had mailed the application for review to EAB, considering that she had not even signed the form until the 9th, which was the same day she mailed it. For claimant's confusion or forgetfulness to constitute good cause to extend the filing period in this case, claimant must establish that, more likely than not, factors or circumstances beyond her reasonable control, in this case, her medical condition, prevented her from making a timely filing. She did not make that showing, thus, good cause to extend the filing deadline has not been shown.

Because the application for review was filed after the 20-day deadline provided by ORS 657.270(4), and good cause to extend the time allowed has not been shown, the application for review must be dismissed.

DECISION: The application for review filed July 9, 2014 is dismissed. Hearing Decision 14-UI-19867 remains undisturbed.

Tony Corcoran and J. S. Cromwell;
Susan Rossiter, not participating.

DATE of Service: July 18, 2014

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the website at court.oregon.gov. Once on the website, click on the blue tab for "Materials and Resources." On the next screen, click on the tab that reads "Appellate Case Info." On the next screen, select "Appellate Court Forms" from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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