

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1256

Application for Review Dismissed

PROCEDURAL HISTORY: On September 23, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 112958). Claimant filed a timely request for hearing. On January 31, 2014, ALJ Holmes-Swanson conducted a hearing, and on February 5, 2014 issued Hearing Decision 14-UI-09878, affirming the Department's decision. On February 25, 2014, Hearing Decision 14-UI-09878 became final without an application for review having been filed. On July 16, 2014, claimant filed by facsimile an 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 his application for review should be dismissed.

ORS 657.270(4) required claimant's applications for review to be filed no later than February 25, 2014; it was filed on July 16, 2014, as shown by the receipt date stamped on the document. OAR 471-041-0065(1)(c) (October 29, 2006) (the filing date of applications for review filed by fax is the receipt date stamped or written on the fax transmission by the public employee who received the document). 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.
 - (b) "A reasonable time" is seven days after the circumstances that prevented timely filing ceased to exist.

Claimant argued that he had good cause for filing a late application for review, because “my employment circumstances during the last 6-7 months have made it difficult to respond to this notice in what you have characterized as ‘in a timely manner’...I believe that the current action taken shows ‘an inexcusable mistake beyond reasonable control of the applicant’, and demonstrates beyond a reasonable doubt that there is good cause to reconsider all decisions made in this case.” Claimant provides no further explanation why his “employment circumstances” led to his failure to file an application for review with EAB in a timely manner. Nor does claimant explain how “the current action taken” demonstrates good cause for failing to file his application for review in a timely manner. The only “current action taken” by claimant in this matter was to file a late application for review five months after the deadline without explaining why filing a timely application was beyond his reasonable control or proving that he filed it within seven days after whatever those circumstances were ceased to exist. 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 16, 2014 is dismissed. Hearing Decision 14-UI-09878 remains undisturbed.

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

DATE of Service: August 5, 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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