

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1311

Application for Review Dismissed

PROCEDURAL HISTORY: On August 13, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was ineligible for Emergency Unemployment Compensation (EUC) (decision # 95016). Claimant filed a timely request for hearing. On November 6, 2013, ALJ R. Frank conducted a hearing and on November 19, 2013, issued Hearing Decision 13-UI-04800, affirming the Department's decision. On December 9, 2013, Hearing Decision became final without an application for review having been filed.

On March 25, 2014, the Department served notice of an administrative decision (decision # 162023) assessing a \$7,328 overpayment based on Hearing Decision 13-UI-04800. Claimant filed a timely request for hearing on decision # 162023.

On April 2, 2014, claimant filed a late application for review of Hearing Decision 13-UI-04800 with the Employment Appeals Board (EAB).¹

On April 28, 2014, ALJ Shoemake conducted a hearing on claimant's request for hearing on decision #162023, and on May 2, 2014, issued Hearing Decision 14-UI-16721, affirming the Department's overpayment decision. On May 21, 2014, claimant filed an application for review of Hearing Decision 14-UI-16721 with the EAB. On June 17, 2014, EAB issued Appeals Board Decision 2014-EAB-0918, affirming Hearing Decision 14-UI-16721. On July 17, 2014, Appeals Board Decision 2014-EAB-0918 became final without a Petition for Judicial Review (PJR) having been filed.

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

¹ EAB did not receive claimant's application for review of Hearing Decision 13-UI-04800 until August 1, 2014.

ORS 657.270(4) required claimant's application for review to be filed no later than December 9, 2013; it was filed on May 2, 2014, as shown by the postmark date affixed to the envelope in which it was mailed. OAR 471-041-0065 (1)(b) (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.

(b) "A reasonable time" is seven days after the circumstances that prevented timely filing ceased to exist.

In written argument, claimant asserted that he was entitled to the more than \$7,000 in benefits he received because he did not know and was not told that he was eligible for benefits in Arizona, and, therefore, ineligible for EUC benefits in Oregon. He also argued that, at the April 28th hearing, he was "not allowed to present [my] case. I was just told I could not address that matter repeatedly." Claimant is correct that he was not allowed to present evidence about his eligibility for EUC benefits, because the April 28th hearing was solely to determine whether claimant received and was liable to repay the EUC benefits he was paid. The hearing about whether or not claimant was eligible for those benefits in the first place had already occurred in November 2013, and that matter became final in December 2013 when claimant did not file a timely application for review of the hearing decision that determined claimant was *not* eligible for the more than \$7,000 he had already received.

This matter now comes before us on claimant's late application for review of Hearing Decision 13-UI-04800, in which ALJ Frank concluded claimant was not eligible for EUC benefits. Because claimant's application for review was filed late, before the merits of that eligibility determination can be addressed, though, meaning, before we can consider whether or not claimant was eligible for the \$7,000 in EUC benefits, claimant must first prove that he had good cause for filing a late application for review in that matter.

Here, claimant's application for review was due no later than December 9, 2013. He filed it in April 2014, almost five months late. In his application for review, though, he did not explain any reason for the almost five month delay in filing. He did not explain what circumstances prevented him from a timely filing, and he did not demonstrate that he filed his application for review within seven days of when those circumstances might have ceased. Because he has failed to show good cause for filing a late application for review, his application for review of Hearing Decision 13-UI-04800 must be dismissed.

Because EAB cannot review the merits of this case, Hearing Decision 13-UI-04800, concluding claimant was ineligible for benefits, must remain undisturbed. Consequently, because claimant remains

ineligible for the EUC benefits that formed the basis of the overpayment matter, claimant's overpayment remains undisturbed as well.

DECISION: The application for review filed April 2, 2014 is dismissed. Hearing Decision 13-UI-04800 remains undisturbed.

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

DATE of Service: August 6, 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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