

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1479

### *Application for Review Dismissed*

**PROCEDURAL HISTORY:** On July 18, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 160944) concluding claimant did not actively seek work from February 16, 2014 through April 12, 2014 (weeks 08-14 through 15-14). Claimant filed a timely request for hearing. On August 8, 2014, ALJ Wyatt conducted a hearing, and on August 18, 2014 issued Hearing Decision 14-UI-23570, affirming the Department's decision. On September 9, 2014, Hearing Decision Hearing Decision 14-UI-23570 became final without an application for review having been filed. On September 15, 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 his application for review should be dismissed.

ORS 657.270(4) required the claimant's application for review to be filed no later than September 9, 2014; it was filed on September 15, 2014, as shown by the date stamped on the fax transmission of the application for review. OAR 471-041-0065(1)(c) (October 29, 2006) (If faxed, the filing date is the receipt date stamped or written on the fax transmission by the public employee who receives 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.

Claimant argued "Upon returning from a job out of town from August 25<sup>th</sup> to September 12<sup>th</sup>, I reviewed the decision and found out that my appeal rights must be filed by September 8<sup>th</sup>...". The

hearing decision was mailed on August 18, 2014 and claimant did not leave town until August 25, 2014. Claimant did not explain when he received the hearing decision or how often he checked his mail. Claimant also did not explain whether he made arrangements to have his mail checked while he was out of town. Because claimant had just had a hearing on August 8, 2014, he reasonably could have expected that a decision would be mailed to him and should have been expecting it in the mail. It was within claimant's reasonable control to make arrangements to have his mail checked in his absence. 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 September 15, 2014 is dismissed. Hearing Decision 14-UI-23570 remains undisturbed.

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

**DATE of Service: September 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](http://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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