

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1509

### *Application for Review Dismissed*

**PROCEDURAL HISTORY:** On October 15, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$5,582 overpayment, \$837.30 in monetary penalties, and 46 penalty weeks based on unreported earnings during the periods of April 4, 2010 through May 22, 2010 (weeks 14-10 through 20-10), May 30, 2010 through August 14, 2010 (weeks 22-10 through 32-10), and August 22, 2010 through October 2, 2010 (weeks 34-10 through 39-10). On November 4, 2013, the October 15, 2013 administrative decision became final without a request for hearing having been filed. On February 21, 2014, claimant filed an untimely request for hearing on the October 15, 2013 administrative decision.

On March 19, 2014, ALJ Kangas issued Hearing Decision 14-UI-12816, dismissing claimant's request for hearing as untimely, subject to claimant's "right to renew" the request by submitting a response to the "Appellant Questionnaire" attached to the hearing decision within 14 days of the date the decision was mailed.<sup>1</sup> On March 25, 2014, claimant timely responded to the appellant questionnaire. On April 29, 2014, the Office of Administrative Hearings (OAH) sent a Letter of Cancellation of Hearing Decision 14-UI-12816. On May 21, 2014, ALJ Micheletti conducted a hearing, and on May 22, 2014 issued Hearing Decision 14-UI-18201, dismissing claimant's request for hearing as untimely. On June 11, 2014, Hearing Decision 14-UI-18201 became final without an application for review having been filed. On September 18, 2014, claimant filed an untimely 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.

An application for review is timely filed if filed within 20 days of the date the Office of Administrative Hearings mailed the hearing decision. ORS 657.270(4). To be timely, claimant's application for review should have been filed no later than June 11, 2014; it was filed on September 18, 2014, as shown by the fax transmission date and the receipt date stamped on the application for review. OAR 471-041-

<sup>1</sup> Hearing Decision 14-UI-12816

0065(1)(c) (October 29, 2006) (if faxed, the filing date is thereceipt date stamped or written on the fax transmission by the public employee who receives the document.). The period for filing an application for review may be extended a reasonable time if good cause is shown for doing so; good cause exists if the claimant demonstrates that factors or circumstances beyond the claimant's control prevented a timely filing. OAR 471-041-0065(2).

Claimant asserted that he attempted to fax his application for review on June 9, 2014, two days before his application for review was due. However, claimant provided no fax transmittal report or other evidence of his attempt to fax the application for review on June 9, 2014. Without supporting evidence, claimant's bare assertion regarding difficulties with his fax transmission does not support a conclusion that circumstances beyond claimant's control prevented him from timely filing his application for review. In addition, claimant did not explain why he waited until September 18, 2014 – three months after he allegedly submitted his application for review by fax -- to contact EAB to verify it had received his application for review. It was well within claimant's reasonable control to contact EAB soon after he sent his fax on June 9, 2014 to verify its receipt.

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 18, 2014 is dismissed. Hearing Decision 14-UI-18201 remains undisturbed.

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

**DATE of Service:** September 23, 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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