

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1925

### *Late Application for Review Dismissed*

**PROCEDURAL HISTORY:** On September 23, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 92452). Claimant filed a timely request for hearing. On November 18, 2014, ALJ Vincent conducted a hearing, and on November 26, 2014 issued Hearing Decision 14-UI-29439 concluding the employer discharged claimant for misconduct. On December 16, 2014, Hearing Decision 14-UI-29439 became final without an application for review having been filed. On December 19, 2014, claimant filed an untimely application for review.

**CONCLUSIONS AND REASONS:** Claimant's late application for review is dismissed.

ORS 657.270(4) required that claimant's application for review of Hearing Decision 14-UI-29439 be filed no later than December 16, 2014. OAR 471-041-0065(1)(c) (October 29, 2006) provides the filing date of faxed documents is the receipt date stamped or written on the fax transmission by the public employee who receives the document. Claimant's faxed application for review was stamped as received on December 19, 2014.

OAR 471-041-0070 (August 30, 2011) provides that the filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875. OAR 471-041-0070(2)(a) provides: "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(3) requires that an individual filing a late application for review include with the late application "a written statement describing the circumstances that prevented a timely filing."

The written statement that accompanied claimant's application for review, date stamped December 19, 2014, stated, "Today was the first day I was able to access a fax machine as I tried to call and speak to someone regarding this appeals process and (sic) they refused to speak to me until I faxed this letter." However, claimant provided no further information to indicate why he didn't have access to a fax

machine until December 19, who he tried to call regarding the appeals process, who refused to speak to him until he faxed the application, why he did not file the application for review in a timely manner using other means, such as mail, or what other factors prevented him from filing his application for review by December 16. Claimant did not provide satisfactory evidence that factors or circumstances beyond his reasonable control prevented timely filing. Therefore, good cause 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 December 19, 2014 is dismissed. Hearing Decision 14-UI-29439 remains undisturbed.

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

**DATE of Service: December 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](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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