

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0024

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On November 7, 2014, the Oregon Employment Department (the Department) served notice of two administrative decisions (decisions # 91012 and 90108) concluding claimant voluntarily left work without good cause, and that claimant was not available for work for the period from October 19 through November 1, 2014 (weeks 43-14 and 44-14). Claimant filed timely requests for hearing. On December 10, 2014, ALJ Murdock conducted two hearings, and on December 12, 2014 issued two Hearing Decisions. Hearing Decision 14-UI-30319 affirmed the Department's decision # 91012. Hearing Decision 14-UI-30318 modified decision # 90108 and concluded claimant was not available for work for the period from October 19 through December 6, 2014 (weeks 43-14 through 49-14). On January 2, 2015, Hearing Decisions 14-UI-30319 and 14-UI-30318 became final without applications for review having been filed. On January 2, 2015, claimant filed untimely applications for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Claimant's late applications for review are dismissed.

ORS 657.270(4) required that claimant's application for review of Hearing Decisions 14-UI-30319 and 14-UI-30318 be filed no later than January 2, 2015.

OAR 471-041-0065(1)(b) (October 29, 2006) provides the filing date of mailed documents is the postmark affixed to the envelope by the United States Postal Service. Claimant's application for review was postmarked on January 12, 2015.

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 stated,

"I have not felt confident to fight for unemployment based on the previous rejections...I received new information that 3 of the 5 Human Resource Managers left Fire Mountain Gems due to adverse working conditions...It came in after the 20-day period to request a review. This is new information that supports my claims of deceptive work practices that finally resulted in my lack of employment."

Claimant has not demonstrated how her lack of confidence in the outcome of fighting for unemployment benefits created a circumstance beyond claimant's reasonable control that prevented her from filing her application for review before January 2, 2014. The mere fact that claimant only learned that three other employees resigned after January 2, 2014 is irrelevant to claimant's failure to file a timely application for review; she had already failed to do so. Claimant did not provide satisfactory evidence that any other factors or circumstances beyond her 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.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 14-UI-30319 and 14-UI-30318. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-0024 and 2015-EAB-0025).

DECISION: The applications for review filed January 12, 2015 are dismissed. Hearing Decisions 14-UI-30319 and 14-UI-30318 remain undisturbed.

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

DATE of Service: January 16, 2015

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.