

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0057

Application for Review Dismissed

PROCEDURAL HISTORY: On October 16, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 91459). Claimant filed a timely request for hearing. On December 5 and December 19, 2014, ALJ R. Davis conducted a hearing, and on December 29, 2014 issued Hearing Decision 14-UI-31011, affirming the Department's decision. On January 20, 2015, Hearing Decision 14-UI-31011 became final without an application for review having been filed. On January 22, 2015, claimant filed an untimely application for review with the Employment Appeals Board (EAB).

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

ORS 657.270(6) required that claimant's application for review of Hearing Decision 14-UI-31011 be filed no later than January 20, 2015. 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 January 22, 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."

Claimant submitted a letter with her application for review in which she stated: "It appears that my application that I sent was somehow lost in the mail and was never received by the Employment Appeals Board. This is why this new request is being sent in late." Claimant provided no further explanation of how she sent her application for review, she provided no address to which she sent it, or to which fax number she sent it, or on which date she sent it. She provided no evidence she contacted

the Office of Administrative Hearings (OAH) or the EAB before January 20, 2015. Claimant had it within her reasonable control to contact the OAH or the EAB to ensure the application had been received. The bare assertion that a document was “lost in the mail” without further evidence is insufficient to demonstrate good cause.

Claimant did not provide satisfactory evidence that 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(6), 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 January 22, 2015 is dismissed. Hearing Decision 14-UI-31011 remains undisturbed.

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

DATE of Service: January 26, 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.

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