

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0202

Application for Review Dismissed

PROCEDURAL HISTORY: On March 31, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 124304). On April 18, 2014, the Department served notice of an administrative decision cancelling decision # 124304 and concluding the employer discharged claimant for misconduct (decision # 134705). Claimant filed a timely request for hearing. On May 6, 2014, the Office of Administrative Hearings issued notice of a hearing scheduled for May 19, 2014 at 10:45 a.m. Claimant did not appear for the hearing. On May 19, 2014, ALJ Murdock issued Hearing Decision 14-UI-17924, dismissing claimant's request for hearing for failure to appear. On June 9, 2014, Hearing Decision 14-UI-17924 became final without an application for review having been filed. On June 19, 2014, claimant filed an untimely request to reopen his hearing.

On July 9, 2014, ALJ Kangas issued Hearing Decision 14-UI-21098, denying claimant's late request to reopen his hearing, and leaving Hearing Decision 14-UI-17924 undisturbed. On July 29, 2014, Hearing Decision 14-UI-21098 became final without an application for review having been filed. On February 24, 2015, claimant filed an untimely application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider this argument in reaching this decision.

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-21098 be filed no later than July 29, 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 February 24, 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 provided no reasons why he did not timely file his application for review.

Because claimant did not provide satisfactory evidence that factors or circumstances beyond his reasonable control prevented him from timely filing his application for review. Therefore, good cause has not been shown has not been shown to extend the timeline and the application for review must be dismissed.

DECISION: The application for review filed February 24, 2015 is dismissed. Hearing Decision 14-UI-21098 remains undisturbed.

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

DATE of Service: March 4, 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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