

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0204

Application for Review Dismissed

PROCEDURAL HISTORY: On December 18, 2014, the Oregon Employment Department (the Department) served notice of two administrative decisions (decisions # 103254 and # 104027) concluding the employer suspended and discharged the claimant for misconduct. Claimant filed a timely request for hearing. On February 4, 2014, ALJ Buckley conducted a consolidated hearing and issued Hearing Decisions 15-UI-32918 and 15-UI-32920, concluding the employer suspended and discharged claimant, but not for misconduct. On February 24, 2015, Hearing Decisions 15-UI-32918 and 15-UI-32920 became final without an application for review having been filed. On February 25, 2015, the employer filed an untimely application for review with the Employment Appeals Board (EAB).

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

ORS 657.270(6) required that the employer's applications for review of Hearing Decisions 15-UI-32918 and 15-UI-32920 be filed no later than February 24, 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. The employer's faxed application for review was stamped as received on February 25, 2015, the same date indicated on the "FROM-TALX" stamp on the application for review.

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 employer submitted a letter with its application for review, referencing "Docket/Case Number: 2015-UI-27453", which begins: "This is in reference to form, Hearing Decision, dated February 10,

2015 which allows benefits to the above individual.”¹ However, Hearing Decisions 15-UI-32918 and 15-UI-32920 were issued on February 4, 2015, as indicated on the first page of the “Certificate of Mailing”, which also stated that “Any appeal from this Order must be filed on or before February 24, 2015 to be timely.”

The employer had it within its reasonable control to carefully read the “Certificate of Mailing” and file a timely application for review. The employer provided no explanation for why it believed the orders were issued on February 10, 2014. The employer did not provide satisfactory evidence that factors or circumstances beyond its 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.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-32918 and 15-UI-32920. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-0203 and 2015-EAB-0204).

DECISION: The applications for review filed February 25, 2015 are dismissed. Hearing Decisions 15-UI-32918 and 15-UI-32920 remain 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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¹ While the employer’s application for review only referenced case # 2015-UI-27453, EAB construed the application as a request for review of both case # 2015-UI-27453 and # 2015-UI-27454.