

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0552-R

*Appeals Board Decision 2015-EAB-0552 Adhered to on Reconsideration
Late Application for Review Dismissed
Disqualification*

PROCEDURAL HISTORY: On March 20, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left her job without good cause (decision # 111241). Claimant filed a timely request for hearing. On April 15, 2015, ALJ Murdock conducted a hearing, and on April 21, 2015, issued Hearing Decision 15-UI-37223, affirming the administrative decision. On May 11, 2015, Hearing Decision 15-UI-37223 became final without an application for review having been filed. On May 13, 2015, claimant filed an untimely application for review with the Employment Appeals Board (EAB).

On May 20, 2015, EAB issued Appeals Board Decision 2015-EAB-0552, dismissing claimant's application for review. On June 1, 2015, claimant submitted a letter to EAB, asking that her late application for review be accepted.¹ Under the discretion granted us by ORS 657.290(3), we will reconsider our decision to dismiss claimant's application for review in Appeals Board Decision 2015-EAB-0552.

As we explained in Appeals Board Decision 2015-EAB-0552, ORS 657.270(6) required that claimant's application for review of the hearing decision at issue be filed no later than May 11, 2015; claimant's application for review was filed on May 13, 2015, two days late. Under OAR 471-041-0070 (August 30, 2011), the deadline for filing an application for review may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875. "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(2)(a).

In support of her request to have her late application for review considered, claimant explained that she suffers from "episodic problems with back pain" and that "[n]umerous medical appointments and medication sometimes impact my abilities to respond in time. This week was a particular hard one for

¹ On June 2, 2015, claimant submitted a written argument in support of her application for review. Because we affirm our decision to dismiss her application for review as untimely, we do not consider this argument.

me and I inadvertently lost track of the due date.” Claimant failed to provide any detailed explanation as to how and why her back pain, medical appointments or medication prevented her from filing a timely application for review, and caused her to inadvertently lose track of the date on which the application for review was due. Without such details, we have no reason to conclude that claimant’s failure to timely file her application for review was caused by circumstances beyond her reasonable control.

On reconsideration, EAB may make a new decision “to the extent necessary and appropriate for the correction of previous error of fact or law.” ORS 657.290(3). Because claimant failed to demonstrate good cause for filing a late application for review, we conclude that we made no error of fact or law in our original decision and therefore adhere to it.

DECISION: Reconsideration is granted. We adhere to our decision in Appeals Board Decision 2015-EAB-0552 as clarified herein.

Susan Rossiter and J. S. Cromwell;
D. P. Hettle, *pro tempore*, not participating.

DATE of Service: June 5, 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 Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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