

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0612

Dismissed
Disqualification

PROCEDURAL HISTORY: On March 26, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the claimant voluntarily left work without good cause (decision # 73954). Claimant filed a timely request for hearing. On April 8, 2015, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for April 23, 2015. On April 23, 2015, ALJ Frank conducted a hearing, and on May 1, 2015 issued Hearing Decision 15-UI-37828, affirming the administrative decision. On May 21, 2015, Hearing Decision 15-UI-37828 became final without an application for review having been filed. On May 27, 2015, claimant filed an untimely application for review.

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 15-UI-37828 be filed no later than May 21, 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 May 27, 2015, two days late.¹

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."

¹ Claimant's application for review was transmitted at 5:04 p.m. on May 26, 2015. A faxed document received by EAB after 5:00 p.m. is marked as received on the following business day. OAR 471-041-0070(1)(c).

In the written statement that accompanied the application for review, claimant stated that the employer's application for review stated that she did not timely file her application for review because "I misplaced my hearing letter. The form I needed was attached to the letter. I finally found it yesterday."

The Notice of Hearing which OAH issued states that if claimant disagrees with the hearing decision she will receive, she can file a request for review with EAB, and explains that information about how to request review will be included with the hearing decision. Hearing Decision 15-UI-37828 included a form for filing an application for review, and the "Certificate of Mailing" attached to the decision stated that "any appeal from this Order must be filed on or before May 21, 2015 to be timely." We also note that the EAB website includes a form for filing an application for review, an information sheet explaining how to file and the deadline for an application for review, and the relevant rules and statutes.² It was well within claimant's reasonable control to carefully read and understand the information provided by OAH in the Notice of Hearing and in Hearing Decision 15-UI-37828, and to keep track of the form provided in this hearing decision. It was also within claimant's reasonable control to consult the EAB website or contact EAB by telephone if she was unsure of how and when to appeal Hearing Decision 15-UI-37828.

Because claimant filed an application for review after the 20-day deadline in ORS 657.270(4), and failed to show good cause to extend this timeline, the application for review must be dismissed.

DECISION: The application for review filed May 27, 2015 is dismissed. Hearing Decision 15-UI-37828 remains undisturbed.

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

DATE of Service: June 2, 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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²Among the statutes contained on the EAB website is OAR 471-041-0060(1)(January 8, 2008) which provides, in relevant part, that although an application for review may be filed on the form provided by the Office of Administrative Hearings, use of the form is not required "provided that the party requests review of a specific hearing decision, or otherwise expresses intent to appeal a specific hearing decision."