

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0956

Late Application for Review Dismissed
Disqualification

PROCEDURAL HISTORY: On April 20, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, not for misconduct (decision #82401). The employer filed a timely request for hearing. On May 21, 2015, ALJ Shoemake conducted a hearing, and on May 29, 2015, issued Hearing Decision 15-UI-39213, concluding that the employer discharged claimant for misconduct. On June 18, 2015, Hearing Decision 15-UI-39213 became final without an application for review having been filed. On August 7, 2015, claimant filed an untimely application for review with the Employment Appeals Board (EAB).

CONCLUSION 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-39213 be filed no later than June 18, 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 August 7, 2015. Claimant therefore filed her application for review 50 days late.

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."

In her application for review, claimant explained that she did not appear at the hearing because she was ill, and that she did not appeal "because I thought it wouldn't be honored since I missed the hearing call." Hearing Decision 15-UI-39213 includes a section entitled "**APPEAL RIGHTS**" which states that "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Hearing Decision 15-UI-39213

at 5. It was well within claimant's reasonable control to carefully read the decision to understand she had a right to appeal the decision, and the timeline for making such an appeal. Claimant has therefore failed to show good cause for filing an untimely application for review, which therefore must be dismissed.

DECISION: The application for review filed August 7, 2015 is dismissed. Hearing Decision 15-UI-39213 remains undisturbed.

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

DATE of Service: August 13, 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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