

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0960

Application for Review Dismissed

PROCEDURAL HISTORY: On May 5, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from March 22, 2015 to April 25, 2015 (decision # 134202). Claimant filed a timely request for hearing. On May 29, 2015, ALJ Shoemake conducted a hearing, and on June 3, 2015 issued Hearing Decision 15-UI-39495, affirming the Department's decision. On June 23, 2015, Hearing Decision 15-IU-39495 became final without an application for review having been filed. On August 4, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Claimant's application for review must be dismissed.

ORS 657.270(6) required claimant's application for review to be filed no later than June 23, 2015; it was filed on August 4, 2015. OAR 471-041-0065 (October 29, 2006). OAR 471-041-0070 (October 29, 2006) provides:

- (1) An application for review is timely if it is filed within 20 days of the date that OAH mailed the hearing decision sought to be reviewed. EAB shall dismiss a late application for review, unless the filing period is extended in accordance with this rule.
- (2) The filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875.
 - (a) "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing.
 - (b) "A reasonable time" is seven days after the circumstances that prevented timely filing ceased to exist.

With his application for review, claimant submitted a copy of the second page of administrative decision # 141030, on which he underlined the date that decision was mailed (July 15, 2015) and the deadline by which any appeal of that decision must be filed in order to be timely (August 4, 2015). It appears claimant is arguing that his August 4, 2015 application for review in this case was filed on time. However, it was not. It appears that claimant has confused the deadline he had for appealing

administrative decision # 141030 with the deadline by which he was required to file an application for review of Hearing Decision 15-UI-39495.

There are two overlapping issues here that involve two entirely separate appeal proceedings. This case started with decision # 134202, in which the Department concluded claimant was ineligible for benefits during certain weeks because he did not actively seek work. Claimant appealed that to the Office of Administrative Hearings (OAH), a hearing was held, and Hearing Decision 15-UI-39495 was issued. After that decision was issued, claimant did not appeal it to this office by the deadline printed on the front page of that hearing decision. Based on those proceedings, claimant is ineligible for benefits during the weeks covered in those decisions.

In the other case, which is not before EAB, the Department issued another decision, decision # 141030, in which the Department concluded that claimant was overpaid benefits. That decision was the one related to the second page claimant submitted with his argument, which was issued on July 15th, and for which an appeal had to be filed no later than August 4th. That case is still pending at OAH.¹ Because that is a separate case from this one, though, the August 4th deadline does not apply to this case.

The deadline that applies in this case is the one printed on the front of Hearing Decision 15-UI-39495, which was June 23, 2015, making claimant's August 4, 2015 filing late by about six weeks. Claimant did not provide a reason for waiting almost six weeks after that deadline to file his application for review in this case. Therefore, good cause to extend the filing deadline has not been shown, and claimant's application for review must be dismissed.

DECISION: The application for review filed August 4, 2015 is dismissed. Hearing Decision 15-UI-39495 remains undisturbed.

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

DATE of Service: August 12, 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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¹ Department records show that claimant appears to have filed a timely request for hearing on the overpayment matter. It appears that OAH has scheduled claimant for a hearing on the overpayment matter on August 21, 2015. If he has not already, claimant should receive information about the hearing and how to participate in it by mail. If claimant has any questions about that hearing, or how to participate in it, he must direct his questions directly to OAH.