

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0986

Late Applications for Review Dismissed
Ineligible
Disqualification

PROCEDURAL HISTORY: On April 7, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was ineligible for benefits during the period between two academic terms (decision #85307). On April 8, 2015, the Department served notice of decision concluding that claimant voluntarily left work without good cause (decision #145837). Claimant filed timely requests for hearing. On April 29, 2015, ALJ Shoemake issued Hearing Decision 15-UI-37667, dismissing claimant's request for hearing on decision #85307 because claimant had withdrawn it. On May 11, 2015, ALJ Shoemake issued Hearing Decision 15-UI-38254, dismissing claimant's request for hearing on decision #145837 because claimant had withdrawn it. On May 19, 2015, Hearing Decision 15-UI-37667 became final without an application for review having been filed. On June 1, 2015, Hearing Decision 15-UI-38254 became final without an application for review having been filed. On August 20, 2015, claimant filed applications for review of Hearing Decisions 15-UI-37667 and 15-UI-38254 by fax.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-37667 and 15-UI-38254. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-0985 and 2015-EAB-0986).

ORS 657.270(6) required that claimant's application for review of Hearing Decisions 15-UI-37667 be filed no later than May 19, 2015, and that his application for review of Hearing Decision 15-UI-38254 be filed no later than June 1, 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 applications for review were stamped as received on August 20, 2015. Claimant's applications for review were therefore untimely.

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.”

With his applications for review, claimant included a statement in which he apologized for “cancelling” his hearings and for failing to request new hearings. Claimant stated that he “misplaced the unopened envelope with documents to request a new hearing, and explained that he “was not aware of anything” until he received a bill for \$2,150. Claimant included a copy of the bill to which he refers; it is a billing the Department sent for repayment of unemployment benefits claimant was overpaid.

Claimant apparently never opened the envelopes in which he was sent Hearing Decisions 15-UI-37667 and 15-UI-38254. Each of these decisions contained the following statement: “You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date this decision is mailed.” The certificate of mailing for each decision stated the date by which an appeal must be filed to be timely. It was well within claimant’s reasonable control to open the envelopes in which the decisions were mailed, read the decisions, and understand his appeal rights. Claimant has therefore failed to show that circumstances beyond his reasonable control prevented him from timely filing his applications for review, and they are therefore dismissed.¹

DECISION: The applications for review filed August 20, 2015 are dismissed. Hearing Decisions 15-UI-37667 and 15-UI-38254 remain undisturbed.

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

DATE of Service: August 21, 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 In his application for review, claimant stated that he has a “serious financial problem” and is unable to repay the Department for the benefits he was overpaid. We note that the overpayment notice claimant received includes the following phone number for the Benefit Payment Control Collection Unit that claimant may call to make repayment arrangements: 1-800-553-5396.