

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1230-R

Request for Reconsideration Granted
Late Application for Review Dismissed

PROCEDURAL HISTORY: On August 14, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 120530). On August 18, 2015, the Department served notice of an administrative decision (decision # 201008) assessing a \$2,790 overpayment, 42 penalty weeks, and a \$418.50 monetary penalty, based on decision # 120530. Claimant filed timely requests for hearing on both administrative decisions. On September 17, 2015, ALJ Homes-Swanson conducted hearings, and on September 23, 2015, issued Hearing Decision 15-UI-44743, which affirmed administrative decision # 120530 (the voluntary quit decision) and Hearing Decision 15-UI-44745, which affirmed administrative decision # 201008 (the overpayment decision). On October 13, 2015, Hearing Decision 15-UI-44743 became final, without an application for review having been filed with the Employment Appeals Board (EAB). On October 14, 2015, claimant filed an untimely application for review of Hearing Decision 15-UI-44745 with EAB. On October 21, 2015, EAB issued Appeals Board Decision 2015-EAB-1230, dismissing claimant's application for review as untimely. On November 5, 2015, claimant submitted a letter to EAB in which he apologized for filing a late application for review and asked that EAB to review his case. Under the authority granted to us by ORS 657.290(3), we will reconsider Appeals Board Decision 2015-EAB-1230 to review issues raised in the claimant's November 5 letter.

OAR 657.270(6) and ORS 657.270(7) required that claimant's application for review be filed on or before October 13, 2015; claimant's application was filed on October 14, 2015. Under OAR 471-041-0070(2) (March 20, 2012), the period for filing an application for review may be extended a reasonable time upon a showing of "good cause." "Good cause" exists if an applicant demonstrates that "factors or circumstances beyond the applicant's reasonable control prevented timely filing." OAR 471-041-0070(2)(a). In his November 5 letter, claimant explained that he sent the application for review to EAB several days before it was due, and apologized "that the form was not expedited. I should have accounted for inadequate USPS processing time for shipment." The certificate of mailing for Hearing Decision 15-UI-44745 advised claimant that he must file his appeal by October 13, 2015 to be timely. A copy of a form, Form UI Pub 15, was attached to the decision; this form advised claimant that his

application for review must be postmarked, faxed or delivered by 5 p.m. on the date on which the decision became final.¹ It was well within claimant's reasonable control to carefully read and understand the instructions he received for filing an application for review, and to use delivery method that would ensure that his application for review was timely filed. Claimant therefore failed to demonstrate good cause for filing an untimely application for review.

EAB may reconsider a decision to correct an error of fact or law. We find no error of fact or law in Appeals Board Decision 2015-EAB-1230 that requires correction and adhere to this decision on reconsideration.

DECISION: Reconsideration is granted. We adhere to Appeals Board Decision 2015-EAB-1230.

Susan Rossiter and J. S. Cromwell

DATE of Service: November 10, 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 We take official notice of form UI PUB 15, a publication contained in Employment Department records. Any party that objects to our so doing must submit its objection to this office in writing, setting forth the basis of the objection, within ten days of the date on which this decision is mailed. OAR 471-041-0090(3) (October 29, 2006). Unless such an objection is received and sustained, the noticed publication will remain in the record.