

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1403**

*Application for Review Dismissed*

**PROCEDURAL HISTORY:** On September 22, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 101338). Claimant filed a timely request for hearing. On November 3, 2015, ALJ Kangas conducted a hearing, and on November 5, 2015 issued Hearing Decision 15-UI-47271, affirming the Department's decision. On November 25, 2015, Hearing Decision 15-UI-47271 became final without claimant having filed a timely application for review. On December 1, 2015, claimant filed a late application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Claimant's late application for review is dismissed.

ORS 657.270(6) allows parties 20 days after a hearing decision is mailed to file an application for review with EAB, or the hearing decision becomes final. In this case, the hearing decision was mailed on November 5th, giving claimant until November 25th to file an application for review.

OAR 471-041-0065(1) establishes that the filing date of a document faxed to EAB "is the receipt date stamped or written on the fax transmission by the public employee who receives the document." In this case, although claimant's representative *signed* the application for review form on November 25th, the fax encoding dates and receipt date stamped by the EAB employee who received the document demonstrate that she did not actually fax the document until December 1st, making the application for review 6 days late.

ORS 657.875 provides that the period within which claimant may file his application for review with EAB "may be extended, upon a showing of good cause therefor, a reasonable time under the

circumstances of each particular case."<sup>1</sup> OAR 471-041-0070(2)(a) defines "good cause" as "when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing."

Claimant argued that EAB should allow his late application for review. On claimant's application for review form, his representative stated, "not enough time to gather evidence due to 7 days mailing from Salem to Salem." On an attached document, the representative stated,

There is more to this story. Your internet rights of review say 20 days from upper right hand corner, or decision mail date. It was mailed 11/5, but received 11/12/15. Why would it take 7 days to mail? Please see attached letter for appeal. Something mailed from Salem to Salem shouldn't take 7 days. Please see attached letter. This only allowed us 13 days to act, not 20.

In the attached letter, the representative reiterated some of the record evidence and provided new information about claimant's work separation, but did not further explain the reason(s) claimant's application for review was filed after the deadline for doing so expired.

However, claimant did not show "good cause" for filing a late application for review. Both the hearing decision itself and the "rights of review" document claimant's representative referenced clearly stated that claimant had 20 days from the hearing decision's mailing date to file the application for review.<sup>2</sup> The "rights of review" document also stated that parties are permitted an additional 20 days to submit an argument, and provided EAB's local and toll-free numbers for parties to contact for information about how to file an application for review.

Assuming claimant is correct, and it took 7 days for the hearing decision to reach claimant, thus allowing claimant only 13 days to submit an application for review, that means that claimant had 13 days to sign and fax, mail or deliver the application for review form attached to the hearing decision or the alternative form available online. Claimant did not explain or establish any reason why he failed to file his application for review within the 13 days he had left. He did not explain why 13 days was inadequate time to submit the form. He did not explain why he had to "gather evidence" before submitting the form, he did not identify what evidence he needed time to gather, and it does not appear that he submitted evidence about the work separation with his application for review, aside from the letter his representative attached to the application for review. Nor did claimant explain why he could not have submitted a timely application for review and continued to "gather evidence" later, especially

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<sup>1</sup> OAR 471-041-0070(2)(b) defines "a reasonable time" as "seven days after the circumstances that prevented timely filing ceased to exist." As previously stated, claimant filed his application for review 6 days late. It is more likely than not that he met the seven day "reasonable time" standard. However, that is immaterial unless claimant also establishes that he met the "good cause" standard, which, for the reasons explained herein, claimant did not.

<sup>2</sup> See Hearing Decision 15-UI-47271 at 3. Also, we take notice of the contents of the "rights of review of a hearing decision" document, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

given that his representative had the application for review form, and signed and dated it, on November 25th, the date the application for review was due, but did not submit it until it was too late.

Claimant failed to show that factors or circumstances beyond his reasonable control prevented him from filing the application for review on time. Therefore, claimant has failed to show that he had good cause to extend the filing period, and his late application for review must be dismissed.

**DECISION:** The application for review filed December 1, 2015 is dismissed. Hearing Decision 15-UI-47271 remains undisturbed.

Susan Rossiter and J. S. Cromwell

**DATE of Service: December 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](http://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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