

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0033

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On August 6, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$400 overpayment, \$100 monetary penalty and 3 penalty weeks (decision # 195331). On August 26, 2014, decision # 195331 became final without claimant having filed a timely request for hearing. On April 30, 2015, claimant filed a request for hearing. On May 26, 2015, ALJ reviewed his request and issued Hearing Decision 15-UI-39013, dismissing claimant's request for hearing as late subject to his right to renew the request by responding to an appellant questionnaire by June 9, 2015. On June 9, 2015, the Office of Administrative Hearings (OAH) received claimant's response. On June 11, 2015, ALJ Kangas reviewed claimant's response and issued Hearing Decision 15-UI-39881, re-dismissing claimant's late request for hearing. On July 1, 2015, Hearing Decision 15-UI-39881 became final without an application for review having been filed.

On January 7, 2016, claimant filed a late application for review with the Employment Appeals Board (EAB). Because claimant's application for review was filed after the 20-day deadline expired, the application for review was late. ORS 657.270(7)(b). The deadline may be extended a reasonable time upon a showing of good cause. ORS 657.875. "Good cause" means factors or circumstances beyond the party's reasonable control, and a "reasonable time" means 7 days after the circumstances that prevented a timely filing ceased. OAR 471-041-0070(2). With his application for review, claimant submitted a fax confirmation page showing that he successfully transmitted a faxed application for review to one of the Department's local offices on June 17, 2015, which, if received, would have constituted a timely, valid application for review. OAR 471-041-0060(2).¹ For reasons unknown, claimant's request was neither received nor processed by the office to which it was directed, and never received by EAB. The failure of Department staff to correctly process claimant's application for review constituted a factor or circumstance beyond his reasonable control. Claimant discovered the problem on January 7, 2016 when he spoke with EAB staff, and filed his application for review the same day, so his

¹ A faxed document is filed when received, as shown by the receipt date stamped upon it by the employee who received the document. OAR471-041-0065(1)(c).

ultimate filing occurred within a reasonable time.² Claimant's late application for review of Hearing Decision 15-UI-39881 is, therefore, allowed.

Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision. Even if we had, our decision would remain the same because claimant argued only that decision # 195331 was incorrect, and did not include any information tending to show that he filed his late request for hearing within a reasonable time.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 15-UI-39881 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: January 11, 2016

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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² We take notice of claimant's conversation with EAB staff, 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.