

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0035

Late Application for Review Dismissed

PROCEDURAL HISTORY: On December 1, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer suspended claimant on September 12, 2014 for misconduct (decision # 122235). The administrative decision was sent to claimant at the following address: 834 SE Maliah Ave., Madras OR 97441-2204. On December 22, 2014, decision # 122235 became final, without a request for hearing having been filed. On December 24, 2014, claimant filed an untimely request for hearing; at that time, she indicated that her address of record was 834 SE Maliah Ave., Madras OR. On January 7, 2015, ALJ Kangas issued Hearing Decision 15-UI-31433, dismissing claimant's hearing request as untimely, subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days of the date on which the decision was mailed. This hearing decision was sent to claimant at the Maliah Ave. address. On January 7, 2015, Hearing Decision 15-UI-31433 became final without claimant having responded to the questionnaire within 14 days or filed an application for review. On December 17, 2015, claimant submitted an untimely response to the appellant questionnaire; in her response, she indicated that her address of record was 185 SW 1st, Madras OR 97741. By letter dated December 21, 2015, ALJ Kangas notified claimant that her response to the appellant questionnaire was untimely, that no new order would be issued, and that Hearing Decision 15-UI-31433 remained in effect. On January 4, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Under OAR 657.270(7), a dismissal of a request for hearing by an administrative law judge is final unless the party whose hearing request was dismissed files an application for review "within 20 days after the dismissal notice was mailed to the party's last-known address." Claimant's application for review was filed on January 4, 2016 – over a year after the dismissal notice was mailed to her – and was therefore untimely. 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). With her application for review, claimant included a letter in which she explained that she did not receive the January 2015 hearing decision because "I had moved several times." The record shows that when claimant filed her hearing request on December 24, 2014, her address of record with the Department was 834 SE Maliah Ave. Given that she knew or

should have known that she would be receiving notice of a hearing based on the request she had made, it was well within claimant's reasonable control to notify the Department or the Office of Administrative Hearings (OAH) of any change in this address of record. Because claimant failed to do so, she apparently did not receive Hearing Decision 15-UI-31433, which was mailed no more than two weeks after she submitted her hearing request.¹ We therefore conclude that the claimant failed to demonstrate good cause for filing an untimely application for review.²

DECISION: The application for review filed January 4, 2016 is dismissed. Hearing Decision 15-UI-31433 remains undisturbed.

DATE of Service: January 15, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

¹ See e.g., OAR 471-040-0010(1)(b)(A) (February 10, 2012) which provides that "good cause" for reopening a hearing does not include an individual's failure to receive a document because a person did not notify the Department or OAH of a change of address "if the person knows, or reasonably should know, of a pending appeal."

² In her application for review, claimant indicated her disagreement with administrative decision # 122235, asserting that the employer did not discharge her until June 2015. We note that administrative decision # 122235 concluded that the employer *suspended* claimant on September 12, 2014 for misconduct.