

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0440

Late Application for Review Dismissed

PROCEDURAL HISTORY: On February 17, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 100623). Claimant filed a timely request for hearing. On March 23, 2016, ALJ M. Davis conducted a hearing, and on March 23, 2016, issued Hearing Decision 16-UI-55759, affirming the administrative decision. On April 13, 2016, Hearing Decision 16-UI-5579 became final without an application for review having been filed. On April 14, 2016, claimant filed an untimely 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, which was filed on April 14, 2016, more than 20 days after the date on which the hearing decision under review was mailed to him, is 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 his application for review claimant included a letter in which claimant stated that he had been unsure if he was going to appeal the hearing decision, but “decided Monday I might as well send it [the application for review] in. My neighbor was going to work so I asked him to drop it at the post office. He brought it back to me with an apology.” Claimant failed to provide more details, such as the date he decided to appeal the hearing decision, the date he gave the letter containing his application for review to his neighbor to mail, and the date his neighbor returned the letter containing the application for review to claimant. Without such details, we have no factual basis for concluding that claimant’s failure to timely file his application for review resulted from circumstances beyond his reasonable control. Claimant has therefore failed to demonstrate good cause for extending the period to file his application for review, and we dismiss it as untimely.

DECISION: The application for review filed April 14, 2016 is dismissed. Hearing Decision 16-UI-55759 remains undisturbed.

DATE of Service: April 19, 2016

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

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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