

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0448**

*Late Application for Review Dismissed  
Disqualified*

**PROCEDURAL HISTORY:** On January 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 94037). The employer filed a timely request for hearing. On February 11, 2016, ALJ Vincent conducted a hearing at which claimant failed to appear, and on February 17, 2016, issued Hearing Decision 16-UI-53134, concluding that the employer discharged claimant for misconduct. On March 8, 2016, Hearing Decision 16-UI-53134 became final, without an application for review having been filed. On April 19, 2016, claimant filed an untimely application for review with the Employment Appeals Board (EAB).

ORS 657.270(6) required that claimant's application for review of Hearing Decisions 16-UI-53134 be filed no later than March 8, 2016. OAR 471-041-0065(1)(c) (October 29, 2006) provides the filing date of faxed documents is the receipt date stamped or written on the fax transmission by the public employee who receives the document. The record shows that claimant filed his application for review by fax on April 19, 2016, six weeks after the filing period ended. Claimant's application for review was therefore untimely.

OAR 471-041-0070 (August 30, 2011) provides that the filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875. OAR 471-041-0070(2)(a) provides: "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(3) requires that an individual filing a late application for review include with the late application "a written statement describing the circumstances that prevented a timely filing." Claimant's application for review consists of a letter in which he explained that missed the February 11 hearing because he did not receive notice of it. Claimant failed to provide any details which would explain why his application for review was untimely. Without such details, we have no factual basis to conclude that claimant's failure to timely file his application for review resulted from circumstances beyond his reasonable control. Claimant's late application for review is therefore dismissed.

**DECISION:** The application for review filed April 19, 2016 is dismissed. Hearing Decision 16-UI-53134 remains undisturbed.

**DATE of Service:** April 20, 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](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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