

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0449

Late Application for Review Dismissed

PROCEDURAL HISTORY: On February 26, 2016, the Oregon Employment Department (the Department) served notice of the following two administrative decisions: decision # 112005 concluded that the employer discharged claimant for misconduct and decision # 95633 concluded that claimant failed to file claims for unemployment benefits within the required time periods. On March 17, 2016, both administrative decisions became final without requests for hearing having been filed. On March 18, 2016, claimant filed late requests for hearings on the administrative decisions. On March 29, 2016, ALJ Kangas issued the following hearing decisions that dismissed claimant's hearing requests as untimely: Hearing Decision 16-UI-55976 dismissed claimant's hearing request on decision # 95633 and Hearing Decision 16-UI-55978 dismissed claimant's hearing request on decision # 112005. Both hearing decisions were subject to claimant's right to renew these requests by responding to appellant questionnaires within 14 days of the date on which the decisions were mailed. Claimant did not respond to the appellant questionnaires, and both hearing decisions became final on April 18, 2016 without applications for review having been filed. On April 19, 2016, claimant filed applications for review of Hearing Decisions 16-UI-55976 and 16-UI-55978 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-55976 and 16-UI-55978. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0449 and 2016-EAB-0450).

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 applications for review were filed on April 19, 2016 – one day after the decisions dismissing her hearing requests became final – and were therefore untimely.¹ Under ORS 657.875 and 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." Under OAR 471-041-0070(2), the period for filing an application for review

¹ The filing date for a faxed application for review is the receipt date stamped upon the document by the employee who received it; by administrative rule, documents received after 5:00 p.m. are marked as received the next business day. OAR 471-041-0065(1)(c). Because claimant faxed her applications for review after 5:00 p.m. on March 18, 2016, they must be considered to have been filed on March 19, 2016.

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 the “physical and emotional (and financial) toll” of losing her job had caused a flare up of an auto immune disease that left her incapacitated. We note that the disease did not prevent claimant from preparing her applications for review; the issue which claimant did not address is whether and how the disease may have impaired her ability to timely file these applications for review. Based on the information claimant provided, we therefore have no reason to conclude that a circumstance beyond her reasonable control, *i.e.*, her auto immune disease, caused her to file her applications for review one day late. Claimant’s applications for review are therefore dismissed as untimely.

DECISION: The applications for review filed April 19, 2016 are dismissed. Hearing Decisions 16-UI-55976 and 16-UI-55978 remain undisturbed.

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

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. 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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