

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0555

Application for Review Dismissed

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 March 23, 2016, the Department served notice of another administrative decision assessing a \$2,415 overpayment based on decision # 94037 (decision # 110513). Claimant filed a timely request for hearing. On April 18, 2016, ALJ Vincent conducted a hearing on decision # 110513.

On April 19, 2016, claimant filed an untimely application for review of Hearing Decision 16-UI-53134 with the Employment Appeals Board (EAB). On April 20, 2016, EAB issued Appeals Board Decision 2016-EAB-0448, dismissing claimant's late application for review of Hearing Decision 16-UI-53134.

On April 22, 2016, ALJ Vincent issued Hearing Decision 16-UI-57921, affirming decision # 110513's assessment of a \$2,415 overpayment. On May 12, 2016, Hearing Decision 16-UI-57921 became final without claimant having filed an application for review with EAB. On May 13, 2016, claimant filed a late application for review of Hearing Decision 16-UI-57921 with EAB.

With claimant's application for review of Hearing Decision 16-UI-57921, claimant included a written argument explaining why he did not appear at the February 11, 2016 hearing on decision # 94037, requesting review of Hearing Decision 16-UI-53134, and explaining his perception of the circumstances that caused the work separation adjudicated in those decisions. Claimant had already requested review of Hearing Decision 16-UI-53134, however, and EAB dismissed his request because he filed his application for review late. In his original application for review, as now, claimant has not provided EAB with any explanation for why he filed his April 19, 2016 application for review of Hearing Decision 16-UI-53134 after the filing deadline expired. Regardless, EAB has already reached a decision in that matter, and claimant is not entitled to have a second review of the same matter. The time period

in which claimant could have requested EAB reconsider its decision to dismiss his application for review under OAR 471-041-0145 has expired, and, unless claimant chooses to file a petition for judicial review with the Oregon Court of Appeals, as explained in this and our previous decisions, Appeals Board Decision 2016-EAB-0448 will become final on May 20, 2016.

With respect to claimant's late application for review of Hearing Decision 16-UI-57921, although ORS 657.875 and OAR 471-041-0070 (August 30, 2011) provide that the deadline for a party to file an application for review may be extended under certain circumstances, claimant's cannot. OAR 471-041-0070(3) requires that an individual filing a late application for review must include with the late application "a written statement describing the circumstances that prevented a timely filing." Claimant has not provided EAB with any statement describing why he filed his May 13, 2016 application for review one day late, and, therefore, his late application for review of Hearing Decision 16-UI-57921 must be dismissed.

DECISION: The application for review filed May 13, 2016 is dismissed. Hearing Decision 16-UI-57921 remains undisturbed.

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

DATE of Service: May 18, 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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