

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0658**

*Late Application for Review Dismissed*

**PROCEDURAL HISTORY:** On August 10, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 104128). Claimant filed a timely request for hearing. On September 9, 2015, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for September 10, 2015.<sup>1</sup> On September 11, 2015, ALJ Monroe issued Hearing Decision 15-UI-44222, dismissing claimant's hearing request for failure to appear at the September 10 hearing. Claimant filed a timely request to reopen. On October 14, 2015, ALJ Holmes-Swanson conducted a hearing, and on October 15, 2015, issued Hearing Decision 15-UI-45988, denying claimant's request to reopen. On November 4, 2015, Hearing Decision 15-UI-45988 became final without an application for review having been filed with the Employment Appeals Board (EAB). On June 6, 2016, claimant filed an untimely application for review with EAB.

ORS 657.270(6) required that claimant's application for review of Hearing Decisions 15-UI-45988 be filed no later than November 4, 2015. 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 June 4, 2016, seven months 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

<sup>1</sup> On September 9, 2015, an OAH employee contacted claimant and the employer and obtained their consent to schedule the hearing for September 10. Claimant and the employer agreed to waive notice of the hearing, consented for the hearing to be held on September 10, and confirmed the information contained in the notice of hearing, including the date and time of the scheduled hearing, and the phone number and access code necessary to participate in the hearing.

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." With his application for review, claimant included a letter in which he explained that "I have been having some hardships as I am a single father in my 50's [sic] with a son who has a chronic auto immune disease along with a host of other person issues I've been going through. I didn't even realize that this was a possible remedy until recently after I talked to an attorney." To the extent that claimant's challenging personal situation caused his late application for review, claimant failed to explain specifically how the difficulties he has encountered prevented him from timely filing his application for review. To the extent that claimant's lack of knowledge or understanding of the application for review process delayed his timely filing, we note that Hearing Decision 15-UI-44222 contained a statement regarding claimant's appeal rights. This statement informed claimant that he had the right to appeal the hearing decision by filing an application for review within 20 days from the date the decision was mailed, provided a form for filing an application for review, and referred claimant to a pamphlet enclosed with the decision, "Rights of Review of a Hearing Decision," for more information. It was well within claimant's reasonable control to carefully read the materials included with Hearing Decision 15-UI-44222 to understand his appeal rights and the time limit he had if he wished to file an application for review. We also note that claimant provides no explanation why, if he was unsure about his appeal rights, he apparently waited several months to consult with an attorney and obtain legal advice. Claimant has therefore failed to show that any circumstances beyond his reasonable control prevented him from timely filing his application for review. Claimant's late application for review is therefore dismissed.

**DECISION:** The application for review filed April 19, 2016 is dismissed. Hearing Decision 15-UI-44222 remains undisturbed.

**DECISION:** The application for review filed June 4, 2016 is dismissed. Hearing Decision 15-UI-45988 remains undisturbed.

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

**DATE of Service: June 8, 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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