

State of Oregon  
**Employment Appeals Board**  
875 Union St. N.E.  
Salem, OR 97311

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0685**

*Late Application for Review Dismissed*

**PROCEDURAL HISTORY:** On March 31, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 90758). Claimant filed a timely request for hearing. On April 15, 2016, the Office of Administrative Hearings issued notice of a hearing scheduled for April 26, 2016. The notice of hearing was sent to the employer at the following address: 7420 SW Bridgeport Rd Ste 105, Portland OR 97224, which was its address of record. On April 26, 2016, ALJ Monroe conducted a hearing in which the employer did not participate, and on May 4, 2016, issued Hearing Decision 16-UI-58861, concluding that the employer discharged claimant, but not for misconduct. The hearing decision was sent to the employer at its Portland address. On May 24, 2016, Hearing Decision 16-UI-58861 became final without an application for review having been filed. On June 9, 2016, the employer filed an untimely application for review with the Employment Appeals Board (EAB).

ORS 657.270(6) required that the employer's application for review of Hearing Decisions 16-UI-58861 be filed no later than May 24, 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 the employer claimant filed his application for review by fax on June 9, 2016, over two weeks after the filing period ended. The employer'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." The employer's application for review includes a letter in which the employer's executive director asks that the hearing be reopened and states:

I was unaware of the original hearing due to the fact it was sent to different address. It would need to be sent to the community where the claimant worked which would be Bayside Terrace 192 Norman Ave Coos Bay OR 97420.

We infer that the notice of hearing was sent to the employer's corporate or central office in Portland. In her letter, the employer's executive director provides no details about problems that may have occurred in processing mail that could have delayed transmission of mail from the employer's central office to the facility where she worked, and does not explain when and how she received a copy of Hearing Decision 16-UI-58861. Without such details, we have no reason to find that any circumstances beyond the employer's reasonable control prevented the executive director from timely receiving the hearing decision at issue. Instead, we conclude that it was well within the employer's reasonable control to timely and efficiently process mail and deliver mail to its facilities. The employer's late application for review is therefore dismissed.

**DECISION:** The application for review filed June 9, 2016 is dismissed. Hearing Decision 16-UI-58861 remains undisturbed.

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

**DATE of Service: June 10, 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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