

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0725

Late Application for Review Dismissed

PROCEDURAL HISTORY: On April 20, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 102358) concluding that claimant did not actively seek work from February 28 through April 2, 2016 (weeks 9-16 through 13-16). Claimant filed a timely request for hearing. On May 19, 2016, ALJ Seideman conducted a hearing, and on May 25, 2016, issued Hearing Decision 16-UI-60445, affirming the administrative decision. On June 14, 2016, Hearing Decision 16-UI-60445 became final, without an application for review having been filed. On June 17, 2016, claimant filed an untimely application for review with the Employment Appeals Board (EAB).

With his application for review, claimant included information that was not part of the hearing record. Claimant failed to show that factors or circumstances beyond his reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We therefore did not consider the information claimant submitted. *See* ORS 657.275(2).

ORS 657.270(6) required that claimant's application for review of Hearing Decisions 16-UI-60445 be filed no later than June 14, 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 17, 2016, three days 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 included a letter in which claimant offered the following explanation for filing an untimely application for review:

I am currently working in Albany and I leave my home at 5:30 AM and driving an hour there, working 10 hour days and driving an hour back. Because of the long hours I have been working I did not file for my review on time.

The fax transmission information on claimant's application for review shows that it was sent from a Department office at 9:48 a.m. on June 17, indicating that on that date, claimant was apparently able to arrange for time off from work. Without any additional information about claimant's work schedule, *e.g.*, why it prevented him from filing an application for review on or before June 14 (mailing it, faxing it after business hours), but allowed him to file it on June 17, we cannot conclude that circumstances beyond claimant's reasonable control prevented a timely filing. Claimant's late application for review is therefore dismissed.

DECISION: The application for review filed June 17, 2016 is dismissed. Hearing Decision 16-UI-60445 remains undisturbed.

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

DATE of Service: June 23, 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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