

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0750

Late Application for Review Dismissed

PROCEDURAL HISTORY: On March 16, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 195733) assessing a \$11,060 overpayment, 52 penalty weeks and a \$3,318 monetary penalty. On April 5, 2016, decision # 195733 became final without a request for hearing having been filed. On April 19, 2016, claimant filed a late request for hearing. On May 23, 2016, ALJ Kangas issued Hearing Decision 16-UI-60201, dismissing claimant's late hearing request, subject to her right to renew the request by responding to an appellant questionnaire within 14 days. On June 13, 2016, Hearing Decision 16-UI-60201 became final, without an application for review having been filed. On June 22, 2016, claimant filed an untimely application for review with the Employment Appeals Board (EAB) and also responded to the appellant questionnaire. By letter dated June 23, 2016, the Office of Administrative Hearings told claimant that her response to the appellant questionnaire was untimely and that Hearing Decision 16-UI-60201 remained in effect.

ORS 657.270(6) required that claimant's application for review of Hearing Decisions 16-UI-60201 be filed no later than June 13, 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 claimant filed her application for review by fax on June 22, 2016, 9 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." With her application for review, claimant included a letter in which she provided two reasons for her untimely filing. First, claimant asserted that because the employer's executive director had been put on administrative leave for theft, fraud and violating the employer's policies, she was unable to timely respond. Second, claimant contended that when she "reached out to [the employer's board of directors] regarding my unemployment claim, I was directed to

contact the Unemployment Department on my own accord.” Claimant failed to provide any specific details or explanation why the executive director’s problems or the actions of the employer’s board of directors prevented her from filing an application for review within the 20 day time period required by law. Without these details, we cannot conclude that circumstances beyond claimant’s reasonable control prevented her from timely filing her application for review. Her application for review is therefore dismissed.

DECISION: The application for review filed June 22, 2016 is dismissed. Hearing Decision 16-UI-60201 remains undisturbed.

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

DATE of Service: June 24, 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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