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

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EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0768

Late Applications for Review Dismissed
Solicitudes Tardías de Revisiónes Despididas

PROCEDURAL HISTORY: On January 22, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 123844). On January 25, 2016, the Department served notice of an administrative decision (decision # 194371) assessing a $665 overpayment, a $99.75 monetary penalty, and five penalty weeks, based on decision # 123844. On February 11, 2016, decision # 123844 became final without a request for hearing having been filed, and on February 16, 2016, decision # 194371 became final without a request for hearing having been filed. On February 24, 2016, ALJ Kangas issued Hearing Decision 16-UI-53721, which dismissed claimant's request for hearing on decision # 123844 as untimely, and Hearing Decision 16-UI-53675, which dismissed claimant's request for hearing on decision # 53675 as untimely. Both hearing decisions were subject to claimant's right to renew her hearing requests by responding to appellant questionnaires. Claimant responded to the appellant questionnaires, and by letter dated March 15, 2016, the Office of Administrative Hearings (OAH) cancelled Hearing Decisions 16-UI-53721 and 16-UI-53675.

On March 22, 2016, OAH issued notices of hearings scheduled for April 5, 2016 on claimant's hearing requests. Claimant failed to appear at the hearing on decision # 123844, and on April 5, 2016, ALJ Menegat issued Hearing Decision 16-UI-56545, dismissing claimant's hearing request on decision # 123844 for claimant's failure to appear. ALJ Menegat conducted a hearing on claimant's request for hearing on decision # 194371 on April 5 and 17, 2016, and on April 24, 2016, issued Hearing Decision 16-UI-60623, allowing claimant's late hearing request and affirming decision # 194371.

Claimant filed a timely request to reopen the hearing on decision # 123844.[1] On May 17, 2016, ALJ Menegat conducted a hearing, and on May 24, 2016, issued Hearing Decision 16-UI-60261, in which he

[1] A copy of claimant's request to reopen, and a translation of this request have been marked as EAB Exhibit 1. A copy of EAB Exhibit 1 is attached to this order. Any party that objects to the admission of EAB Exhibit 1 must submit its objections

concluded that claimant had good cause for reopening, allowed claimant's late request for hearing, and affirmed decision # 123844.

On June 13, 2016, Hearing Decisions 16-UI-60261 and 16-UI-60263 became final, without applications for review having been filed. On June 15, 2016, claimant filed untimely applications for review with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review claimant's applications for review of Hearing Decisions 16-UI-60261 and 16-UI-60263. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0767 and 2016-EAB-0768).

ORS 657.270(6) required that claimant's application for review of Hearing Decisions 16-UI-60261 and 16-UI-60263 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 applications for review by fax on June 15, 2016, two days after the filing period ended. Claimant's applications for review were 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 applications for review describe personal difficulties claimant has been experiencing, but provide no explanation why these difficulties prevented her from timely filing her applications for review. Without such an explanation, we have no reason to find that any factors beyond claimant's reasonable control are responsible for her untimely filing of these applications for review, and her applications for review are therefore dismissed.

DECISION: The applications for review filed June 15, 2016 are dismissed. Hearing Decisions 16-UI-60261 and 16-UI-60263 remain undisturbed. *Las solicitudes para revisiones archividas 15 de junio, 2016 son despididas. Decisiones de las Audiencias 16-UI-60261 y 16-UI-60263 permanecen vigentes.*

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

DATE of Service: <u>June 30, 2016</u>

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

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in writing to this office, setting forth the basis of its objection, within 10 days of the date on which this decision is mailed. If no objection is received, EAB Exhibit 1 will remain part of the record.

'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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to https://www.surveymonkey.com/s/5WQXNJH. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

***NOTA**: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en **courts.oregon.gov**. En este sitio web, hay información disponible en español.*

Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atencion al cliente. *Para llenar este formulario, puede visitar* https://www.surveymonkey.com/s/5WQXNJH. *Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.*