

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0854

Late Application for Review Dismissed
Request for Hearing Dismissed

PROCEDURAL HISTORY: On May 6, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 151254). Claimant filed a timely request for hearing. On June 1, 2016, ALJ Murdock conducted a hearing and on June 6, 2016, issued Hearing Decision 16-UI-61099, concluding that the employer discharged claimant, but not for misconduct. On June 15, 2016, the Department served notice of an administrative decision (decision # 203773) assessing a \$1144 overpayment, 9 penalty weeks and a \$171.60 monetary penalty, based on decision # 151254. The employer filed a timely request for hearing on decision # 203773.

On June 27, 2016, Hearing Decision 16-UI-61099 (the discharge decision) became final without an application for review having been filed. On July 6, 2015, ALJ M. Davis issued Hearing Decision 16-UI-63184, dismissing the employer's request for hearing on decision # 203773 (the overpayment decision) because the employer withdrew the request. On July 15, 2016, the employer filed an untimely application for review of Hearing Decision 16-UI-61099 and a timely application for review of Hearing Decision 16-UI-63184 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-61099 and 16-UI-63814. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0854 and 2016-EAB-0855).

The employer failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the record in these cases, and failed to show that factors or circumstances beyond the employer's reasonable control prevented the employer from offering the information during the hearings as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

Late Application for Review of Hearing Decision 16-UI-61099: ORS 657.270(6) required that the employer's application for review of Hearing Decision 16-UI-61099 be filed no later than June 27,

2016. OAR 471-041-0065(1)(b) (October 29, 2006) provides the filing date of a mailed document is the postmark date on the envelope in which the document was mailed. The record shows that the postmark on the envelope in which the employer mailed its application for review was July 15, 2016, more than 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 provided no statement regarding any circumstances that may have prevented it from timely filing an application for review. The employer's application for review is therefore dismissed.

Application for Review of Hearing Decision 16-UI-63184: EAB reviewed the entire record in this case. On *de novo* review and pursuant to ORS 675.275(2), Hearing Decision 16-UI-63184 is **adopted**.

DECISION: The application for review filed July 15, 2016 is dismissed. Hearing Decision 16-UI-61099 remains undisturbed. Hearing Decision 16-UI-63184 is affirmed.

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

DATE of Service: July 25, 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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