

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0863

Late Application for Review Dismissed

PROCEDURAL HISTORY: On March 2, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 200444) assessing a \$2,241 overpayment, 17 penalty weeks and a \$336.15 monetary penalty. On March 22, 2016, decision # 200444 became final without a request for hearing having been filed. On June 9, 2016, claimant filed an untimely hearing request. On June 22, 2016, ALJ Kangas issued Hearing Decision 16-UI-62373, dismissing claimant's hearing request as untimely, subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days. Claimant failed to timely respond to the appellant questionnaire. On July 12, 2016, Hearing Decision 16-UI-62373 became final without an application for review having been filed. On July 22, 2016, claimant filed an untimely application for review with the Employment Appeals Board (EAB).

ORS 657.270(6) required that claimant's application for review of Hearing Decisions 16-UI-62373 be filed no later than July 12, 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 his application for review by fax on July 22, 2016, 10 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 his application for review, claimant included a letter in which he explained that "I am a Truck driver and have not had the time to respond to this situation in a timely manner. My work schedule is getting up between midnight to two in the morning, and not returning home [until] between five and seven PM." Claimant stated that he had taken July 22 off "to take care of business issues." Claimant did not explain why he was unable to take time off from work prior to July 12, the date on which the period for timely filing his application for review ended.

Claimant has therefore failed to demonstrate that circumstances beyond his reasonable control prevented him from timely filing his application for review, and his application for review is dismissed.

DECISION: The application for review filed July 22, 2016 is dismissed. Hearing Decision 16-UI-62373 remains undisturbed.

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

DATE of Service: July 26, 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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