

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1189

Late Application for Review Dismissed

PROCEDURAL HISTORY: On July 21, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 81807). The employer filed a timely request for hearing. On August 31, 2016, ALJ Ballinger conducted a hearing, and on September 1, 2016 issued Hearing Decision 16-UI-66701, concluding claimant voluntarily left work without good cause. On September 21, 2016, Hearing Decision 16-UI-66701 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On October 19, 2016, claimant filed a late application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant attended the August 31, 2016 hearing. During the hearing, the ALJ told the parties that he would issue a written decision based on the evidence he gathered during the hearing. Audio recording at ~ 11:27. The ALJ also stated,

Following today's hearing I'll issue my written decision. Generally you can expect to receive a copy of that decision in the mail *in about a week or so*. When you receive that decision you will also receive information concerning your appeal rights. If you for any reason disagree with my, uh, decision you have the right to file an appeal with the Employment Appeals Board and the enclosed information will explain those appeal rights.

Audio recording at ~ 35:33 (emphasis added).

(2) Claimant did not receive a copy of Hearing Decision 16-UI-66701 when it was originally mailed. On October 5, 2016, the Department mailed notice of an overpayment decision to claimant. The overpayment decision was based on Hearing Decision 16-UI-66701. On October 7, 2016, claimant called the Department and reported that she had not received Hearing Decision 16-UI-66701, and indicated that she planned to request review from EAB.¹

¹ We take notice of the date of the Department's overpayment decision and the date of claimant's call to the Department, information which is contained in Employment Department records. Any party that objects to our doing so must submit such

CONCLUSIONS AND REASONS: Claimant's late application for review is dismissed.

ORS 657.270(6) provides that a hearing decision is final unless a party files an application for review with EAB within 20 days after the hearing decision was mailed. The deadline for filing a timely application for review in this matter was September 21, 2016. Claimant filed her application for review on October 19, 2016. Claimant's application for review was, therefore, late.

ORS 657.875 provides that the filing deadline "may be extended, upon a showing of good cause therefor, a reasonable time under the circumstances of each particular case." "'Good cause' exists when the applicant provides satisfactory evidence that factors of circumstances beyond the applicant's reasonable control prevented timely filing." OAR 471-041-0070(2)(a) (October 29, 2006). "'A reasonable time' is seven days after the circumstances that prevented timely filing ceased to exist." OAR 471-041-0070(2)(b). We turn first to the "reasonable time" requirement because it is dispositive.

Claimant probably filed a late application for review in this matter because she did not receive a copy of the hearing decision when it was originally mailed to her in September 2016. That was, therefore, the circumstance that prevented a timely filing. Department records show that claimant knew that Hearing Decision 16-UI-66701 existed, and that it denied her benefits and had caused an overpayment, by October 7, 2016 at the latest. Therefore, assuming facts in the light most favorable to claimant, October 7, 2016 was the date upon which the circumstance that prevented a timely filing ceased to exist.² In order to establish that she filed her late application for review within "a reasonable time," claimant had to file the application no later than "seven days" after October 7, 2016.

Claimant filed her application for review by mailing it through the U.S. Postal Service. OAR 471-041-0065(1)(b) (October 29, 2006) states that the filing dates for documents filed by mail "is the date that the document is deposited in the United States mail in an envelope with first class postage, as evidenced by the postmark affixed to the envelope by the United States Postal Service." The envelope claimant used to file her application for review was postmarked October 19, 2016, making that the filing date. October 19, 2016 filing date was more than seven days after October 7, 2016. Therefore, claimant's late application for review was not filed within the seven day "reasonable time" period set by OAR 471-041-0070(2)(b), and claimant's late application for review must be dismissed.

DECISION: The application for review filed October 19, 2016 is dismissed. Hearing Decision 16-UI-66701 remains undisturbed.

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

objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed facts will remain in the record.

² Given that the ALJ advised claimant during the hearing to expect to receive a copy of Hearing Decision 16-UI-66701 "in about a week or so" after August 31, 2016, we consider it unreasonable for claimant to have waited over a month after the hearing before inquiring about the decision.

DATE of Service: October 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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