

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1201

Applications for Review Dismissed

PROCEDURAL HISTORY AND FINDINGS OF FACT: On October 7, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with Arctic Glacier USA, Inc. on June 24, 2014 without good cause (decision # 121447). On October 27, 2014, decision # 121447 became final without claimant having filed a timely request for hearing. On October 29, 2014, the Department served notice of an administrative decision based in part on decision # 121447 in which the Department assessed a \$5,375 overpayment, \$1,612.50 monetary penalty and 44 penalty weeks (decision # 200585). On November 18, 2014, decision # 200585 became final without claimant having filed a timely request for hearing.

On November 25, 2014, claimant filed late requests for hearing on decisions # 121447 and 200585. On December 18, 2014, ALJ Kangas issued Hearing Decision 14-UI-30586, dismissing claimant's late request for hearing on decision # 121447 subject to his right to renew the request by responding to an appellant questionnaire within 14 days. On December 24, 2014, the Office of Administrative Hearings (OAH) mailed notice of a hearing on decision # 200585 for January 8, 2015. On January 2, 2015, the deadline for claimant to respond to the questionnaire attached to Hearing Decision 14-UI-30586 expired. On January 7, 2015, Hearing Decision 14-UI-30586 became final without claimant having responded to the appellant questionnaire or requested review with the Employment Appeals Board (EAB).

On January 8, 2015, ALJ Triana convened a hearing on decision # 200585 and continued it upon claimant's request. On January 9, 2015, OAH mailed notice of the continued hearing scheduled for

January 16, 2015. On January 16, 2015, ALJ Triana concluded the hearing and issued Hearing Decision 15-UI-32018, concluding claimant did not have good cause to file a late request for hearing on decision # 200585 and dismissing claimant's request for hearing. On February 5, 2015, Hearing Decision 15-UI-32018 became final without claimant having filed an application for review with EAB.

On October 21, 2016, claimant requested review of these matters. On October 26, 2016, ALJ Kangas issued a letter stating that OAH would not consider claimant's request as a response to Hearing Decision 14-UI-30586 because it was received more than 14 days after that decision was issued. Although claimant requested "a hearing" in his October 21, 2016 submission, the records on review show that claimant has already requested hearings in both matters in dispute and both of his requests were dismissed because he filed his requests for hearing too late and did not show good cause to extend the filing periods. Both decisions became final without claimant having filed timely applications for review with EAB. Therefore, claimant's submission is construed as a late application for EAB to review Hearing Decisions 14-UI-30586 and 15-UI-32018, which dismissed claimant's late requests for hearing on decisions # 121447 and 200585, respectively.

CONCLUSIONS AND REASONS: Claimant's late applications for review are dismissed.

ORS 657.270(6) required claimant's application for review of Hearing Decision 14-UI-30586 to be filed no later than January 7, 2015, and his application for review of Hearing Decision 15-UI-32018 to be filed no later than February 5, 2015. Claimant's application for review of both hearing decisions was filed on October 21, 2016. *See* OAR 471-040-0065 (October 29, 2016). It was, therefore, late. ORS 657.875 allows the filing period to be extended a reasonable time upon a showing of good cause. OAR 471-040-0070 (October 29, 2016) defines "good cause" as "factors or circumstances beyond the applicant's reasonable control" and "reasonable time" as "seven days after the circumstances that prevented timely filing ceased to exist."

In support of his request claimant stated,

I just had spinal surgery and was highly medicated on very strong pain medication and did not even realize what day it was. I was a member of the Labor Union Local 296. I did not quit any jobs. I worked and was layed [sic] off repeatedly [sic]. I am appealing this. I would like a hearing.

Although the circumstances and time involved in recovering from spinal surgery might constitute good cause under certain circumstances, without evidence about when claimant "just" had surgery, during what time frame claimant's medicated state prevented him from filing applications for review, or, indeed, specifically what the surgery and/or medication prevented claimant from doing, we cannot conclude that his surgery and/or medicated state prevented him from filing applications for review in January and February 2015. Nor does the record show that claimant's October 21, 2016 filing occurred within 7 days of the date whatever circumstances prevented him from filing applications for review in January and February 2015 ceased to exist. Claimant has, therefore, not shown he is entitled to an extension of the filing deadline in these matters.

DECISION: The applications for review filed October 21, 2016 are dismissed. Hearing Decisions 14-UI-30586 and 15-UI-32018 remain undisturbed.

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

DATE of Service: November 9, 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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