

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1310

Late Application for Review Dismissed

PROCEDURAL HISTORY: On September 1, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 144414). Claimant filed a timely request for hearing. On September 23, 2016, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for October 3, 2016. On September 27, 2016, claimant telephoned OAH and requested the hearing be cancelled, and ALJ Murdock issued Hearing Decision 16-UI-68155, dismissing claimant's hearing request. On October 17, 2016, Hearing Decision 16-UI-68155 became final without claimant having filed an application. On November 16, 2016, claimant filed an untimely application for review with the Employment Appeals Board (EAB).

CONCLUSION AND REASONS: Claimant's late application for review of Hearing Decision 16-UI-68155 is dismissed.

ORS 657.270(6) required that claimant's application for review of Hearing Decision 16-UI-68155 be filed no later than October 17, 2016. Claimant filed the application for review on November 16, 2016. Her application for review therefore was late. 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. "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(2)(a). "A reasonable time" is seven days after the circumstances that prevented timely filing ceased to exist. OAR 471-041-0070(2)(b). 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."

In her application for review, claimant stated that,

In past I mist [sic] two times because I am working, and I thought it was not that important, more over I don't drive that fare [sic], and I did not know it was on a phone too.

The statement explained why claimant may have mistakenly cancelled the October 3 hearing. Claimant provided no reason, however, why she waited more than a month to file an application for review of Hearing Decision 16-UI-681555. Claimant has therefore failed to demonstrate good cause for the late application for review.

DECISION: The application for review filed November 16, 2016 is dismissed. Hearing Decision 16-UI-68155 remains undisturbed.

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

DATE of Service: November 28, 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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