

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1328

Late Application for Review
Dismissed

PROCEDURAL HISTORY: On September 12, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 150153). The employer filed a timely request for hearing. On October 24, 2016, ALJ Triana conducted a hearing in which claimant did not participate, and on October 28, 2016, issued Hearing Decision 16-UI-70170, concluding that claimant was disqualified from the receipt of benefits. On November 17, 2016, Hearing Decision 16-UI-70170 became final without claimant having filed an application for review. On November 28, 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-65860 is dismissed.

ORS 657.270(6) required that claimant's application for review of Hearing Decision 16-UI-70170 be filed no later than November 17, 2016. Claimant filed his application for review on November 28, 2016. The 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."

With his application for review, claimant included a letter in which he explained that correspondence regarding the hearing was lost in the "increased amount of mail" he had received because of a hospital stay in July. Claimant stated that he overlooked correspondence about his hearing because it was "caught in a stack of mail." Claimant provided no information about any circumstances that prevented him from opening and reading mail he had received. Because it was within claimant's reasonable

control to open and read his mail, he failed to show good cause for his late application for review, which therefore is dismissed as untimely without good cause.

DECISION: The application for review filed November 28, 2016 is dismissed. Hearing Decision 16-UI-70170 remains undisturbed.

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

DATE of Service: December 1, 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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