

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1405

Late Application for Review Dismissed

PROCEDURAL HISTORY: On June 13, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 103749) concluding that claimant did not actively search for work from April 10 through April 30, 2016 (weeks 15-16 through 17-16). On July 5, 2016, decision # 103749 became final without a request for hearing having been filed. On September 20, 2016, claimant filed an untimely request for hearing. On September 23, 2016, ALJ Kangas issued Hearing Decision 16-UI-67946, dismissing claimant's hearing request as untimely subject to claimant's right to renew his request by responding to an appellant questionnaire within 14 days. On October 13, 2016, Hearing Decision 16-UI-67946 became final without an application for review having been filed. On December 13, 2016, claimant submitted his appellant questionnaire to the Office of Administrative Hearings a (OAH) and filed an application for review with the Employment Appeals Board (EAB). By letter dated December 14, 2016, OAH informed claimant that because he had not submitted his appellant questionnaire within 14 days of the date on which Hearing Decision 16-UI-67946 was issued, it would not be considered.

Evidentiary Matter: With his application for review, claimant submitted a copy of his appellant questionnaire response, which contains information that is relevant to EAB's determination as to whether claimant had good cause for filing an untimely application for review. EAB therefore considered claimant's appellant questionnaire response, which is marked as EAB Exhibit 1. A copy of EAB Exhibit 1 is included with this decision. Any party that objects to the admission of EAB Exhibit 1 must submit its objections to this office in writing, setting forth the basis of the objection, within ten days of the date on which this decision is mailed. Unless such an objection is received, EAB Exhibit 1 will remain part of the record.

FINDINGS OF FACT: (1) On or about September 18, 2016, claimant received a bill for unemployment benefits he had been overpaid. On September 20, 2016, claimant contacted the Department; after he learned that the overpayment resulted from decision # 103749, he requested a hearing on this decision.

(2) Claimant never received Hearing Decision 16-UI-67946 when it was mailed to him on September 23, 2016. On November 28, 2016, he contacted OAH and the Department regarding his hearing request. A second copy of the hearing decision was mailed to him on that date.

CONCLUSION AND REASONS: Claimant's late application for review of Hearing Decision 16-UI-67946 is dismissed.

ORS 657.270(6) required that claimant's application for review of Hearing Decision 16-UI-67946 be filed no later than October 13, 2016. Because claimant filed his application for review on December 13, 2016, it 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).

Because claimant did not receive Hearing Decision 16-UI-6796 when it was issued on September 23, 2016, and only received it after he contacted the Department and OAH on November 28, 2016, claimant demonstrated good cause for extending the period for filing his application for review. The record does not show that claimant filed his application for review within a reasonable time after the circumstances that prevented his timely filing ceased to exist, however. Based on this record, it appears that OAH mailed claimant a copy of Hearing Decision 16-UI-6796 on or about November 28. In order for claimant's application for review to have been filed within a reasonable time, *i.e.*, within 7 days of the date on which he received the hearing decision, claimant would have had to have received the hearing decision on or after December 6, which seems unlikely. Because we conclude that claimant did not show good cause to extend the filing deadline to December 13, 2016, his application for review is dismissed.

DECISION: The application for review filed December 13, 2016 is dismissed. Hearing Decision 16-UI-67946 remains undisturbed.

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

DATE of Service: December 23, 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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