

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0228

Application for Review Dismissed

PROCEDURAL HISTORY: On February 18, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 114321). Claimant filed a timely request for hearing. On February 24, 2016, ALJ Seideman issued Hearing Decision 16-UI-53993, dismissing claimant's hearing request on information and belief that claimant had withdrawn his request for hearing. On March 21, 2016, Hearing Decision 16-UI-53993 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On February 17, 2017, claimant filed a late application for review with EAB.

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

ORS 657.270(6) required claimant's application for review to be filed no later than March 21, 2016; it was filed almost eleven months late on February 17, 2017, as shown by the postmark affixed to the envelope in which he mailed his application. OAR 471-041-0065 (October 29, 2006). OAR 471-041-0070 (October 29, 2006) provides:

- (1) An application for review is timely if it is filed within 20 days of the date that OAH mailed the hearing decision sought to be reviewed. EAB shall dismiss a late application for review, unless the filing period is extended in accordance with this rule.
- (2) The filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875.
 - (a) "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing.
 - (b) "A reasonable time" is seven days after the circumstances that prevented timely filing ceased to exist.

(3) The applicant shall include with the application for review a written statement describing the circumstances that prevented a timely filing. * * *

In claimant's application for review, he argued that his request for hearing on decision # 114321 was dismissed in error, that he had not sought to withdraw his request for hearing, and he disputed that his discharge by the employer was for misconduct. He did not, however, include "a written statement describing the circumstances that prevented a timely filing," of his application for review as required under OAR 471-041-0065(3). In the absence of any explanation why claimant filed his application for review of Hearing Decision 16-UI-53993 eleven months after the filing deadline expired, claimant has not shown that he has "good cause" to extend the filing deadline and has not proven that his late filing occurred within a "reasonable time," as required under OAR 471-041-0065(2). His application for review must, therefore, be dismissed.

DECISION: The application for review filed February 17, 2017 is dismissed. Hearing Decision 16-UI-53993 remains undisturbed.

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

DATE of Service: March 1, 2017

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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