

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0260

Late Application for Review Dismissed

PROCEDURAL HISTORY: On September 6, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 104714) concluding that claimant failed to actively search for work from August 7 through 27, 2016 (weeks 32 through 34). Claimant filed a timely request for hearing. On October 10, 2016, ALJ Kirsten Murdock conducted a hearing, and on October 20, 2016, issued Hearing Decision 16-UI-69607, affirming the administrative decision. On November 9, 2016, Hearing Decision 16-UI-69607 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On February 28, 2017, claimant filed an untimely application for review with EAB.

CONCLUSIONS AND REASONS: Claimant's late applications for review of Hearing Decision 16-UI-69607 is dismissed.

Hearing Decision 16-UI-69607 was issued on October 10, 2016. ORS 657.270(6) required that claimant's application for review be filed no later than November 9, 2016. Because claimant's application for review was filed on February 28, 2017, it was late. OAR 471-041-0070 (August 30, 2011) provides that the period for filing an application for review 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).

With her application for review, claimant included a written statement in which she explained that she wanted to appeal the hearing decision, but was informed that

...I should have used a form that came with the letter indicating the judge ruled against me, but I never received any communication since the hearing until the most recent letter indicating an overpayment to me, but it is undated.

During the introduction to the hearing, the ALJ explained the hearing procedure, and told claimant that after the hearing concluded, "I'll be mailing a written decision...it will have

information on how to appeal further if you wish to.” Audio Recording at 2:05. At the end of the hearing, the ALJ stated that she would have the decision out “as soon as possible.” Audio Recording at 11:51. Claimant therefore knew, or should have known, that she would be receiving a written decision after the October 10 hearing. If claimant did not receive the written decision, as it appears she did not, it was well within her reasonable control to contact the Office of Administrative Hearings to ask why she had not received a decision.¹ Claimant has therefore failed to demonstrate good cause to extend the filing period for her application for review, and her untimely application for review must be dismissed.

DECISION: The application for review filed February 28, 2017 is dismissed. Hearing Decision 16-UI-69607 remains undisturbed.

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

DATE of Service: March 3, 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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¹ The notice claimant received for the October 10, 2016 hearing included a phone and fax number for, as well as address of, the Office of Administrative Hearings.