

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0328

Late Application for Review Dismissed

PROCEDURAL HISTORY: On October 19, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 74739). The employer filed a timely request for hearing. On January 10, 2017, ALJ Frank conducted a hearing at which claimant appeared and participated, and on January 18, 2017 served notice of Hearing Decision 17-UI-74903, concluding the employer discharged claimant, not for misconduct, within 15 days of claimant's planned voluntary leaving without good cause. On February 7, 2017, Hearing Decision 17-UI-74903 became final without claimant having filed an application for review the Employment Appeals Board (EAB). On March 13, 2017, claimant filed a late application for review of Hearing Decision 17-UI-74903.

CONCLUSIONS AND REASONS: Claimant's application for review of Hearing Decision 17-UI-74903 is dismissed.

Under ORS 657.270(6) and OAR 471-041-0070(1) (August 30, 2011), claimant's application for review of Hearing Decision 17-UI-74903 needed to be filed no later than February 7, 2017. It was filed on March 13, 2017, and therefore was late. Under ORS 657.875 and OAR 471-041-0070(2), the period for filing an application for review may be extended a reasonable time upon a showing of good cause. "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).

In written argument, claimant asserted that his application for review was late because he did not receive notice of Hearing Decision 17-UI-74903 until March 3, 2017 due to having been required to leave the homeless shelter that was his address of record with the Department before notice of the hearing decision was delivered to that address. The record shows that the January 18, 2017 notice of Hearing Decision 17-UI-74903 mailed to claimant's address of record with the Department was returned to the Department as undeliverable. However, at the end of the January 10, 2017 hearing, the ALJ informed the parties that notice of the hearing decision would be mailed to them within 2 to 14 business days.

Audio Record at 36:40. Claimant failed to show that it was beyond his reasonable control to contact the Office of Administrative Hearings (OAH) in approximately 14 business days (January 30, 2017) and receive notice of Hearing Decision 17-UI-74903 in time to file a timely application for review on or before February 7, 2017. In addition, claimant did not file his application for review until March 13, 2017, which was more than 7 days after he received notice of the hearing decision on March 3, 2017, and therefore not within a reasonable time after the circumstances that prevented timely filing ceased to exist.

Claimant therefore failed to establish good cause to extend the period for filing his application for review to March 13, 2017. His late application for review of Hearing Decision 17-UI-74903 is dismissed.

DECISION: The application for review filed March 13, 2017 is dismissed. Hearing Decision 17-UI-74903 remains undisturbed.

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

DATE of Service: March 20, 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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