

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0348

Application for Review Dismissed

PROCEDURAL HISTORY: On December 28, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 133253). The employer filed a timely request for hearing. On February 7, 2017, ALJ M. Davis conducted a hearing, and on February 8, 2017 issued Hearing Decision 17-UI-76488, concluding claimant worked for the employer as an independent contractor and his work separation was not disqualifying. On February 28, 2017, Hearing Decision 17-UI-76488 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On March 21, 2017, claimant filed a late application for review with EAB.

CONCLUSIONS AND REASONS: Claimant's late application for review of Hearing Decision 17-UI-76488 is dismissed.

ORS 657.270(6) required that claimant's application for review of Hearing Decision 17-UI-76488 be filed no later than February 28, 2017. It was filed on March 21, 2017, and 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 those circumstances ceased to exist. OAR 471-041-0070(2)(b).

Claimant filed a late application for review because new information "just became available to me [on March 16, 2017] past the 20 days allowed to appeal." In support, he argued that "it took some time to have an attorney get back to me do [*sic*] to there [*sic*] busy case load." While claimant's argument establishes that it might have been beyond his reasonable control to provide EAB with the new information within the 20-day appeal period, it did not establish that any factor or circumstance beyond claimant's reasonable control prevented him from filing his application for review within the designated appeal period. Rather, claimant's argument establishes that claimant was aware of the deadline for filing his application for review and chose not to meet it, under circumstances where it is more likely than not that it was within his reasonable control to do so. If claimant was confused about the deadline

or how to submit additional information to EAB, it was also within his reasonable control to contact EAB for information about doing so. Claimant has not established good cause for the late filing, and his application for review must be dismissed.

DECISION: The application for review filed March 21, 2017 is dismissed. Hearing Decision 17-UI-76488 remains undisturbed.

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

DATE of Service: March 23, 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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