

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0459

Application for Review Dismissed

PROCEDURAL HISTORY: On December 17, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 145239). On January 17, 2017, decision # 145239 became final without claimant having filed a timely request for hearing. On January 31, 2017, claimant filed a late request for hearing by phone. On February 6, 2017, ALJ Kangas issued Hearing Decision 17-UI-76274, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by February 20, 2017. Claimant did not respond to the questionnaire by February 20, 2017. On February 27, 2017, Hearing Decision 17-UI-76274 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On April 18, 2017, claimant filed a late application for review of Hearing Decision 17-UI-76274 with EAB.

CONCLUSIONS AND REASONS: Claimant's untimely application for review should be dismissed.

ORS 657.270(6) required claimant's application for review to be filed no later than February 27, 2017; it was filed on April 18, 2017, as shown by the postmark date affixed to the envelope in which he mailed the 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.

With claimant's application for review he submitted a portion of the questionnaire form in which he answered three questions about failing to meet the deadline for requesting a hearing with the phrases "just received form," "just sent," and "just received." Given the lateness of claimant's application for review and failure to return a timely response to the appellant questionnaire form, we infer that claimant's responses on that document pertain to his late application for review. In other words, we infer from the circumstances that claimant failed to file a timely application for review in this matter by February 27th because, on April 18, 2017, he had "just received" the hearing decision and questionnaire.

The record suggests that claimant's address has changed two times since the Department issued decision # 145239. Sometime between the date decision # 145239 was mailed on December 27th and the date claimant requested a hearing by telephone his address changed from McLoughlin Boulevard in Milwaukie to Tannery Street in Oregon City. Sometime between the date the hearing decision and questionnaire were mailed to claimant on February 6th and the date he filed his application for review, his address changed from Tannery Street in Oregon City to Center Street in Salem. Because of the possibility that claimant might not have received the decisions because of an address change that occurred during a period of time he was not claiming benefits, we examined Department records to determine whether and when claimant discovered the existence of Hearing Decision 17-UI-76274, and whether claimant might have had good cause for the late filing and filed his late application for review within a reasonable time.¹

Department records show that although claimant has been homeless, incarcerated and hospitalized during the period between when the Department issued decision # 145239 and the date of his application for review, he has initiated contact with the Department during that period and reopened his claim several times. With respect to claimant's late application for review, it appears that a Department employee told claimant about Hearing Decision 17-UI-76274 on March 2, 2017 and re-sent a copy of that decision to him at that time. It therefore appears that the circumstances that prevented claimant from filing a timely application for review in this matter was, more likely than not, the fact that claimant did not receive or know of the existence of Hearing Decision 17-UI-76274 or its outcome. It appears that that circumstance ceased to exist on March 2, 2017 when the Department employee told claimant about it. In order for claimant to have filed his late application for review within the seven-day "reasonable time" period, he must therefore have filed his application for review by March 9, 2017. Claimant did not file his until April 18th. He therefore did not file his late application for review within a "reasonable time," and his late application for review must be dismissed.

DECISION: The application for review filed April 18, 2017 is dismissed. Hearing Decision 17-UI-76274 remains undisturbed.

¹ We take notice of the information that follows, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

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

DATE of Service: May 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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