

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0478**

*Application for Review Dismissed*

**PROCEDURAL HISTORY:** On January 25, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 70257). Claimant filed a timely request for hearing. On March 24, 2017, ALJ Meerdink conducted a hearing and issued Hearing Decision 17-UI-79655, affirming the Department's decision. On April 13, 2017, Hearing Decision 17-UI-79655 became final without claimant having filed a timely request for hearing. On April 25, 2017, claimant filed a late application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant to the jurisdictional issue before us.

**FINDINGS OF FACT:** (1) Claimant likely received notice of Hearing Decision 17-UI-79655 at his address of record within a few days of when it was mailed. Because he was away from his residence he did not see the decision until approximately April 3, 2017, at which time he read and disagreed with it.

(2) The hearing decision mailed to claimant stated on the "certificate of mailing" page, "Any appeal from this Order must be filed on or before April 13, 2017 to be timely." The hearing decision also stated:

You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed. If you have questions, please refer to the enclosed publication "Rights of Review of a Hearing Decision". If you did not receive a copy of "Rights of Review of a Hearing

Decision” with this decision, call the Office of Administrative Hearings at [phone number omitted] to request a copy.

See Hearing Decision 17-UI-79655 at 3 (internal citations omitted). The referenced publication, “Rights of Review of a Hearing Decision,” included instructions explaining “How do I file an Application for Review?” and “What is the deadline for an ‘Application for Review’?” The “attached form Application for Review” and “Rights of Review of a Hearing Decision” referenced in the hearing decision each included EAB’s phone number.<sup>1</sup>

(3) On April 10, 2017, claimant took the hearing decision paperwork to his attorney. The attorney was absent because he had a back injury. Claimant left the paperwork on his attorney’s desk with a note to call him.

(4) On April 21, 2017, claimant’s attorney returned to work. He saw claimant’s paperwork on his desk and decided to attend to it the following Monday. On approximately April 24, 2017, claimant’s attorney began to deal with claimant’s paperwork, and filed an application for review the following day.

**CONCLUSIONS AND REASONS:** Claimant did not establish good cause to file an untimely application for review, and his application for review should be dismissed.

ORS 657.270(6) required claimant’s application for review to be filed no later than April 13, 2017; it was filed on April 25, 2017, as shown by the postmark affixed to the envelope in which it was mailed. 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.

Claimant argued that he had good cause to extend the deadline to April 25, 2017, attributing the late filing to claimant’s delayed receipt of it or his representative’s “health and [in]ability to work.” We disagree. The reason for claimant’s late filing was not that claimant was out of town and did not receive

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<sup>1</sup> We take notice of the contents of the Rights of Review of a Hearing Decision publication, which was mailed to claimant, is contained in Employment Department records and publicly available on the EAB website at [http://www.oregon.gov/EMPLOY/EAB/Documents/UIPUB15\\_1013.pdf](http://www.oregon.gov/EMPLOY/EAB/Documents/UIPUB15_1013.pdf), as well as the contents of the application for review form claimant used to request review in this matter. 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 facts will remain in the record.

the hearing decision until April 3<sup>rd</sup>, nor was it the fact that claimant's attorney was absent from work due to an injury from April 10<sup>th</sup> through April 21<sup>st</sup>. Claimant's application for review was late because after receiving the hearing decision on April 3<sup>rd</sup> and disagreeing with it, he waited seven days before taking any action, and the action he took was to place the application for review on an absentee attorney's desk with a note call him.

The deadline on the paperwork was clearly stated, and claimant was provided with resources to aid him in filing a timely application for review. Although claimant likely intended for his attorney to file the application for review on his behalf, there is nothing in claimant's argument suggesting that claimant took steps to ensure that the attorney received the paperwork in time to timely file an application for review, let alone followed up with the attorney or his office before the April 13<sup>th</sup> deadline lapsed or otherwise took steps to ensure that either he or his attorney filed a timely application for review. Put another way, claimant's steps ensured that his attorney would, at some point, receive the paperwork and understand that claimant wanted the attorney to call him, but claimant appears to have had no assurances that the attorney knew he wanted to file an application for review, much less reason to rely on assurances from the attorney that the attorney would file the application for review no later than the April 13<sup>th</sup> deadline.

Only evidence that "factors or circumstances beyond the applicant's reasonable control" that prevent a timely filing amount to good cause to extend the filing deadline. Under the circumstances of this case, we cannot say that it was beyond claimant's reasonable control to ensure a timely filing in this matter sometime after receiving the paperwork by April 3<sup>rd</sup> and on or before the April 13<sup>th</sup> deadline. Good cause to extend the filing deadline has not, therefore, been shown. Because the application for review was filed after the 20-day deadline provided by ORS 657.270(6), and good cause to extend the time allowed has not been shown, the application for review must be dismissed.

**DECISION:** The application for review filed April 25, 2017 is dismissed. Hearing Decision 17-UI-79655 remains undisturbed.

Susan Rossiter and J. S. Cromwell;  
D. P. Hettle, 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](http://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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