

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0550**

*Late Application for Review Dismissed*

**PROCEDURAL HISTORY:** On December 29, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 131443). On January 18, 2017, decision # 131443 became final without claimant having filed a request for hearing. On February 22, 2017, claimant filed an untimely request for hearing. On February 27, 2017, ALJ Kangas issued Hearing Decision 17-UI-77781, dismissing claimant's hearing request as untimely, subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days. On March 13, 2017, Hearing Decision 17-UI-77781 became final without a response or an application for review having been filed. On May 4, 2017, claimant filed an untimely application for review with the Employment Appeals Board (EAB) and submitted her response to the appellant questionnaire. By letter dated May 8, 2017, the Office of Administrative Hearings informed claimant that her response to the appellant questionnaire was late and would not be considered.

**EVIDENTIARY MATTER:** Claimant's submission of her response to the appellant questionnaire with her application for review is construed as a request for EAB to consider information not received into the hearing record. Under OAR 471-041-0090(1) (October 29, 2016), information offered, but not received into the hearing record, may be received into evidence as necessary to complete the record. Claimant's response to the appellant questionnaire is necessary to complete the record, and EAB therefore considered her response when reaching this decision. Claimant's response to the appellant questionnaire has been marked as EAB Exhibit 1, and a copy of EAB Exhibit 1 is included with this decision. Any party that objects to the admission of EAB Exhibit 1 must submit its objection in writing to EAB within 10 days of the date on which this decision was mailed. If no objection is received, or an objection is received and overruled, EAB Exhibit 1 will remain part of the record.

**FINDINGS OF FACT:** (1) Claimant has been diagnosed with Bipolar 1 Disorder. As a result of her condition, she periodically has periods of incapacitation which affect her sleep, energy, activity, judgement, behavior and ability to think clearly.

(2) When claimant lost her job in November 2016, she experienced mood swings which included periods of depression and anxiety. Due to the loss of her insurance benefits, claimant was unable to afford medication that normally controlled these symptoms of her mental condition. As a result of her mental condition, claimant did not timely file her request for a hearing. Once claimant was able to see her health care provider and receive needed medication, she was able to function more normally and file her request for a hearing on February 22, 2017.

**CONCLUSION AND REASONS:** Claimant failed to establish good cause for filing a late application for review, and her application for review therefore is dismissed.

An application for review is timely if it is filed within 20 days of the date that OAH mailed the decision for which review is sought. OAR 471-041-0070(1) (March 20, 2014). The 20 day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing OAR 471-040-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0050(2)(b).

To the extent that claimant’s response to the appellant questionnaire addresses her late application for review, claimant has failed to demonstrate good cause for her untimely filing. Claimant asserted that her failure to timely file her request for hearing was caused by the symptoms of her Bipolar 1 Disorder, and she was only able to file her hearing request after she obtained medications needed to control these symptoms. Because claimant filed her hearing request on February 22, 2017, we infer that she had obtained appropriate medication by that date. Claimant does not show or assert that she subsequently went off her medication after February 22. As a result, she did not demonstrate that uncontrolled symptoms of her Bipolar 1 Disorder caused her untimely filing of her application for review of Hearing Decision 17-UI-77781. Claimant has therefore failed to demonstrate good cause for failing to timely file her application for review, and it must be dismissed.

**DECISION:** The application for review filed May 4, 2017 is dismissed. Hearing Decision 17-UI-77781 remains undisturbed.

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

**DATE of Service:** May 11, 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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