

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0879

Late Application for Review Dismissed

PROCEDURAL HISTORY: On December 9, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 115035). The employer filed a timely request for hearing. On January 8, 2016, ALJ S. Lee conducted a hearing, and on January 13, 2016, issued Hearing Decision 16-UI-51034, affirming the administrative decision. On February 2, 2016, Hearing Decision 16-UI-51034 became final without an application for review having been filed. On July 24, 2017, the employer filed an untimely application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: Southern Oregon Regional Brokerage (SORB) did not receive a copy of Hearing Decision 16-UI-51034 until January 20, 2017. The hearing decision was emailed to SORB at its request after SORB received an unemployment tax assessment in late December 2016.

CONCLUSION AND REASONS: The employer failed to establish good cause for extending the period for filing its application for review.

An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the decision for which review is sought. OAR 471-041-0070(1) (March 20, 2014). OAH mailed Hearing Decision 16-UI-51034 on January 13, 2016, and the employer therefore was required to file an application for review by February 2, 2016. The employer's application for review was filed on July 24, 2017, and was therefore late.

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). ORS 657.270(6) required the employer's application for review to be filed no later than February 2, 2016.

SORB explained that its application for review was late because it did not receive Hearing Decision 16-UI-51034 until it requested a copy on January 20, 2017. SORB asserted that “[w]hile it appears the normal routine is to send items out by USPS, this is not a guarantee that it will be received, or even mailed out correctly.” SORB contended that it should not be penalized for an error that apparently occurred in the process of mailing the decision. We do not find that SORB’s failure to timely receive the decision due to a possible error made either by OAH or the U.S. Postal Service constitutes good cause for extending the period for filing an application for review, however.

At the conclusion of the January 8, 2016 hearing, the ALJ explained that she was closing the record, that she would issue a written decision within a week to 10 days, and that the parties should contact OAH if they did not receive the decision within that time period. Audio recording at 33:28. It was well within SORB’s reasonable control to follow the ALJ’s instructions and contact OAH when it did not receive the decision within a week to 10 days after the hearing. SORB therefore failed to show good cause for its failure to timely file an application for review.

Even if we were to conclude that SORB’s failure to receive the hearing decision until January 20, 2017 constituted good cause for extending the filing period, we would conclude that SORB did not file the application for review within a reasonable time after the circumstances that prevented the timely filing ceased to exist. SORB did not file its application for review until July 24, 2017 – far more than seven days after the date on which it received the decision.

SORB therefore did not show good cause for its untimely application for review, and even if it had, did not file its application for review within a reasonable time after the circumstances that prevented a timely filing no longer existed. The application for review must therefore be dismissed.

DECISION: The application for review filed July 24, 2017 is dismissed. Hearing Decision 16-UI-51034 remains undisturbed.

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

DATE of Service: July 27, 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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