

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1105**

*Late Application for Review Dismissed*

**PROCEDURAL HISTORY:** On May 11, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct, but claimant’s benefit rights based on wages earned prior to the date of discharge were not canceled (decision # 84146). Claimant filed a timely request for hearing. On August 17, 2017, ALJ Seideman conducted a hearing, and on August 25, 2017 issued Hearing Decision 17-UI-91216, affirming the Department’s decision. On September 14, 2017, Hearing Decision 17-UI-19216 became final without claimant having filed an application for review. On September 15, 2017, claimant filed an untimely application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On September 13, 2017, claimant’s representative faxed a letter to EAB notifying EAB that claimant was represented in this matter and requesting an “audio transcript” of the hearing held on August 17, 2017.<sup>1</sup> The letter did not request or express any intent to appeal Hearing Decision 17-UI-91216.

(2) On September 14, 2017, at 6:56 p.m., EAB received a faxed application for review of Hearing Decision 17-UI-91216 from claimant’s representative.<sup>2</sup> Because the fax was received after 5:00 p.m.,

<sup>1</sup> EAB takes notice of this letter and fact, which is contained in EAB’s records on 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, 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.

<sup>2</sup> EAB takes notice of this fax and this fact, which is contained in EAB’s records on 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, within ten days of our

the receipt date stamped on the faxed transmission by the EAB employee who received the document is September 15, 2017. The faxed application for review did not contain and was not accompanied by a written statement explaining why it was transmitted after EAB's close of business at 5:00 p.m. or otherwise describing any factors or circumstances beyond claimant or claimant's representative's reasonable control that prevented its filing at or before 5:00 p.m. on September 14, 2017.

(3) On September 18, 2017, EAB received a mailed copy of claimant's application for review from claimant's representative.<sup>3</sup> The postmark affixed to the envelope by the United States Postal service is September 15, 2017. The mailed application for review did not contain and was not accompanied by a written statement explaining why it was not deposited in the United States mail in time to be postmarked September 14, 2017, or otherwise describing any factors or circumstances beyond claimant or claimant's representative's reasonable control that prevented its filing on or before September 14, 2017.

**CONCLUSIONS AND REASONS:** Claimant's application for review is dismissed.

An application for review may be filed on forms provided by OAH or the Employment Department and other similar offices in other states. OAR 471-041-0060(1) (January 8, 2008). Use of the form is not required, provided the party requests review of a specific hearing decision, or otherwise expresses intent to appeal a specific hearing decision. *Id.* 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. ORS 657.270(6); OAR 471-041-0070(1) (March 20, 2014). The 20 day filing period for an application for review may be extended a "reasonable time" upon a showing of "good cause." 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). An applicant who files a late application for review shall include with the application a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The filing date for any document that is faxed to EAB, including an application for review, is the receipt date that is stamped or written on the fax transmission by the public employee who received it. OAR 471-041-0065(1)(c) (October 29, 2006). If EAB receives the faxed document after its close of business at 5:00 p.m. on a weekday or on a Saturday, Sunday or a legal holiday, the document will be marked as received the following business day. *Id.* If a document, including an application for review, is mailed, the filing date is the date that the document is deposited in the United States mail in an envelope with first class postage, as evidenced by the postmark affixed to the envelope by the United States Postal Service. OAR 471-041-0065(1)(b).

Because the faxed application for review that was transmitted by claimant's representative was not received at EAB until 6:56 p.m. on September 14, 2017, the relevant administrative rules establish that it

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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.

<sup>3</sup> EAB takes notice of this letter and fact, which is contained in EAB's records on 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, 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.

was “filed” on September 15, 2017. It therefore was filed after the 20 day deadline set out in ORS 657.270(6) had passed. Likewise, because the mailed application for review was deposited in the United States mail on September 15, 2017, as evidenced by the postmark affixed to the envelope by the United States Postal Service, it also was filed after the 20 day deadline set out in ORS 657.270(6) had passed. While OAR 471-041-0060(1) provides that a document may operate as an application for review if it requests or expresses an intent to appeal a specific hearing decision, the notice of representation and the request for an audio transcript of the hearing faxed to EAB by claimant’s representative on September 13, 2017, before the deadline for the timely filing of an application for review had passed, did not in this case because that document did not refer in any way to the appeal of any hearing decision or suggest an intent to appeal. In addition, because claimant’s representative did not provide any explanation as to why the faxed or mailed application for review was filed on September 15, 2017, after the filing deadline for filing had expired, EAB has no grounds on which to find that there was good cause for the late filing of the application for review. Accordingly, claimant’s late application for review must be dismissed.

**DECISION:** The application for review filed September 15, 2017 is dismissed. Hearing Decision 17-UI-91216 remains undisturbed.

J. S. Cromwell and D. P. Hettle.

**DATE of Service: September 19, 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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