

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1263**

*Late Application for Review Dismissed*

**PROCEDURAL HISTORY:** On July 17, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 110730). The employer filed a timely request for hearing. On August 24, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for September 8, 2017 to the parties' addresses of record with the Department. On September 8, 2017, ALJ Meerdink conducted a hearing at which claimant failed to appear, and on September 11, 2017 issued Hearing Decision 17-UI-92250, concluding the employer discharged claimant for misconduct. On October 1, 2017, Hearing Decision 17-UI-92250 became final without claimant having filed an application for review. On November 1, 2017, claimant filed a late application for review with EAB.

EAB considered claimant's written argument when reaching this decision, to the extent it related to claimant's failure to file a timely application for review.

**CONCLUSION AND REASONS:** Claimant's untimely application for review 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). Because OAH mailed Hearing Decision 17-UI-92250 on September 11, 2017, claimant was required to file an application for review by October 1, 2017. Claimant's application for review was filed on November 1, 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). Claimant asserted in her written argument that she did not receive notice of the September 11 hearing, and that she received and disagreed with the resulting decision, Hearing Decision 17-UI-92250. Claimant further asserted that, upon receipt of the hearing decision, she called the Department, asked why she was not informed about the hearing, and was told by a Department representative that

“[she] would receive a call from ‘your agency’ at that time, [she] could provide the details [of her work separation].” Claimant’s Written Argument. Claimant did not subsequently receive a telephone call from the Department or other agency regarding her benefits, but did receive a letter requesting repayment of the overpayment resulting from the denial. Claimant thereafter filed an application for review with EAB.

Claimant essentially asserts that she filed her application for review late because she relied on a Department representative’s advice and waited to receive a telephone call from the Department or other agency, thus delaying her filing of the application of review until after she received an overpayment notice. Department records show that claimant did call the Department on September 18, after she received the September 11 decision, but was told by a representative that because the hearing resulted in a denial of benefits, claimant “may request a review,” and told claimant to follow the “steps on the [decision] she received to request [a review].”<sup>1</sup> Therefore, Department records show claimant was advised to follow the instructions on the hearing decision and apply for review with EAB, and not advised to wait for a telephone call from an agency. Moreover, it is unlikely that a Department representative would have advised claimant to wait for a telephone call during which time she would provide evidence regarding a work separation, because the appeal process does not work in that manner. Finally, even had claimant been told to expect a call from the Department or EAB, claimant’s explanation does not show why, if she disagreed with Hearing Decision 17-UI-92250, she did not also file a timely application for review with EAB. Absent such a showing, claimant failed to establish that factors or circumstances beyond her reasonable control prevented timely filing.

For the reasons explained, claimant’s late application for review must be dismissed because she lacked good cause to extend the 20-day filing period.

**DECISION:** The application for review filed November 1, 2017 is dismissed. Hearing Decision 17-UI-92250 remains undisturbed.

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

**DATE of Service:** November 8, 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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<sup>1</sup> We take official notice of this information contained in Employment Department records of claimant’s contacts with the Department. Any party that objects to our so doing must submit its objection to this office in writing, setting forth the basis of the objection, within ten days of the date on which this decision is mailed. OAR 471-041-0090(3) (October 29, 2006). Unless such an objection is received and sustained, the noticed information will remain in the record.