

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1275**

*Late Application for Review Dismissed*

**PROCEDURAL HISTORY:** On August 27, 2012, the Oregon Employment Department (the Department) served notice of an administrative decision assessing an overpayment of \$11,718, a monetary penalty of \$1,757.70 and 52 penalty weeks (decision # 193184). On September 17, 2012, decision # 193184 became final without claimant having requested a hearing. On November 12, 2015, claimant filed a late request for hearing. On November 19, 2015, ALJ Kangas issued Hearing Decision 15-UI-47994, dismissing claimant's request for hearing as untimely subject to claimant's right to renew his request by filing a response to an appellant questionnaire by December 3, 2015. On December 9, 2015, Hearing Decision 15-UI-47994 became final without claimant having filed a response to the appellant questionnaire, or an application for review of Hearing Decision 15-UI-47994 with the Employment Appeals Board (EAB). On August 18, 2017, claimant filed a second late request for hearing on decision # 193184. On August 22, 2017, the Office of Administrative Hearings (OAH) issued a letter order construing claimant's second late request for hearing as a request for reconsideration of Hearing Decision 15-UI-47994, and denying that request. On November 3, 2017, claimant filed an application for review of Hearing Decision 15-UI-47994 with EAB.

**CONCLUSIONS 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). The 20 day filing period 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 471-041-0070(2)(b). If a party files an application for review after the 20 day filing period has passed, the party shall include with the application for review a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

While the application for review that claimant filed referenced that a review of Hearing Decision 15-UI-47994 was being sought, it is not clear to us that claimant noticed that pre-printed part on the application for review and if he intended to seek a review of that decision, the August 22, 2017 denial of what OAH construed as claimant's request for reconsideration of Hearing Decision 15-UI-47994 or both

determinations. We will therefore consider the timeliness of claimant's application for review with respect to both determinations.

Claimant's application for review was filed almost two years after Hearing Decision 15-UI-47994 was issued and 42 days after OAH issued the August 22, 2017 order denying claimant's request for reconsideration of Hearing Decision 15-UI-47994. It was untimely with respect to both determinations. The written statement that claimant included with the application for review indicated that he was incarcerated before and around the time decision # 193184 was issued, and addressed the underlying merits of decision # 193184 and why claimant was unable to attend any hearings that might have been scheduled before he was released from jail in 2016. Claimant did not allude to any circumstances that caused his belated filing of an application for review, whether of Hearing Decision 15-UI-47994 or OAH's August 22, 2017 letter order. In the absence of a description of such circumstances, there is no basis on which EAB may conclude that factors or circumstances outside of claimant's reasonable control prevented him from timely filing the application for review or, if they did, that the November 3, 2017 date on which the application for review was filed was within seven days after the circumstances that prevented the timely filing ceased to exist. For this reason, claimant's application for review, whether he intended to seek a review of Hearing Decision 15-UI-47994 or the August 22, 2017 letter order, is dismissed.

**DECISION:** The application for review filed November 3, 2017 is dismissed. Hearing Decision 15-UI-47994 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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