

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0009-R

Request for Reconsideration Dismissed

PROCEDURAL HISTORY: On October 13, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 93510). The employer filed a timely request for hearing. On November 21, 2017, ALJ Amesbury conducted a hearing, and on December 14, 2017 issued Hearing Decision 17-UI-98960, affirming the Department's decision. On January 3, 2018, Hearing Decision 17-UI-98960 became final without the employer having filed an application for review with the Employment Appeals Board (EAB). On January 4, 2018, the employer filed a late application for review with EAB. On January 5, 2018, EAB issued letter decision 2018-EAB-0009, dismissing the employer's late application for review. On January 11, 2018, the employer filed a timely request for reconsideration of that decision. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: The employer's request for reconsideration is dismissed.

ORS 657.290(3) gives EAB discretion to reconsider its prior decisions upon request by any party. OAR 471-041-0145(2)(a) (October 29, 2006) provides that such a request is subject to dismissal unless it "[i]ncludes a statement that a copy has been provided to the other parties." The employer's request did not include a statement or otherwise indicate that the employer sent a copy of its request to claimant. The request is therefore dismissed for failure to comply with the rules governing requests for reconsideration.

Even if we had allowed the employer's request for reconsideration, the outcome of this matter would remain the same. The employer's request for reconsideration was based upon new information that the employer did not submit with its application for review as required by OAR 471-041-0070(3) (February 18, 2012). For EAB to consider the new information on reconsideration, the employer would have had to establish that factors or circumstances beyond the employer's reasonable control had prevented the employer from doing so previously, but included no such evidence with the request for reconsideration. *See accord* OAR 471-041-0090(2) (October 29, 2006). EAB therefore would not have considered the

employer's new information, and EAB's dismissal of the employer's late application for review would have remained undisturbed.

Likewise, even if we had considered the new information, the dismissal decision would still have remained undisturbed. The employer's original application for review in this case was filed late, and, before the employer would be entitled to further review, the employer had to establish that it had good cause to extend the filing period. *See* ORS 657.270(6), ORS 657.875. "Good cause" means factors or circumstances beyond the employer's reasonable control prevented a timely filing. OAR 471-041-0070(2)(a). In this case, the employer filed a late application for review because it was confused between the application for review deadline and the deadline associated with a related administrative charge relief case. Such confusion was, however, well within the employer's ability to resolve, for example, by inspecting the deadlines that appeared on the documents themselves, keeping better track of the deadlines upon learning them, and contacting EAB or the Department to ask questions or verify that the employer correctly understood the deadlines. As such, the employer's confusion would not have amounted to "good cause" for extending the filing period in this case, and the employer's application for review would have remained dismissed.

DECISION: The employer's request for reconsideration is dismissed. Appeals Board Decision 2018-EAB-0009, which dismissed the employer's application for review of Hearing Decision 17-UI-98960, remains undisturbed.

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

DATE of Service: January 18, 2018

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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