

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0042

Late Application for Review Dismissed

PROCEDURAL HISTORY: On June 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 81145). Claimant filed a timely request for hearing. On July 17, 2017, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for July 31, 2017. On July 31, 2017, claimant failed to appear at the hearing, and ALJ Murdock issued Hearing Decision 17-UI-89249, dismissing claimant's request for hearing due to his failure to appear. Claimant filed, by mail to the Employment Appeals Board (EAB), a timely request to reopen the hearing. On September 25, 2017, OAH served notice of a hearing scheduled for October 16, 2017. On October 16, 2017, claimant failed to appear at the hearing, and ALJ Murdock issued Hearing Decision 17-UI-94651, denying claimant's request to reopen the July 31, 2017 hearing due to his failure to appear. Claimant filed, by mail to OAH, a timely request to reopen the October 16, 2017 hearing. On December 4, 2017, ALJ Murdock conducted at hearing at which claimant appeared, and on December 6, 2017 issued Hearing Decision 17-UI-98407, denying claimant's request to reopen the October 16, 2017 hearing. On December 26, 2017, Hearing Decision 17-UI-98407 became final without claimant having filed an application for review. On January 10, 2018, claimant filed, by mail to EAB, a late application for review of Hearing Decision 17-UI-98407 with EAB.

FINDING OF FACT: The late application for review form claimant mailed to EAB on January 10, 2018 was signed and dated by claimant on December 23, 2017.

CONCLUSIONS AND REASONS: Claimant's late application for review of Hearing Decision 17-UI-98407 is dismissed as untimely without a showing of good cause.

An application for review may be filed by mail to EAB, or any office of the Department, or any Employment Security Agency in any other state or jurisdiction where a party is claiming benefits. OAR 471-041-0060(2) (January 8, 2008). 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 (USPS). OAR 471-041-0065(1)(b) (October 29, 2006). Where the postmark affixed to the envelope by the United States Postal Service USPS is missing or

unclear, the filing date is the date that EAB determines to be the most probable date of mailing. OAR 471-041-0065(2).

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).

Here, the late application for review form claimant filed by mail to EAB on January 10, 2018 was signed and dated by claimant on December 23, 2017. With his late application for review, claimant included an envelope addressed to himself at his address in Portland, Oregon, with EAB and its address as the sender and return address. Although the postmark affixed to the envelope by the USPS is illegible, we infer that claimant inadvertently mailed the application for review form to himself on or before December 26, 2017 and then re-mailed the form to EAB on January 10, 2018 after receiving it in the mail. However, claimant did not “file” his application for review on or before December 26, 2017 because he did not mail it *to* EAB on or before that date as required under OAR 471-041-0060(2). Claimant therefore did not file a timely application for review, and he did not assert or show that it was beyond his reasonable control to do so. Nor does the record show that it was beyond claimant’s ability to do so, given that he mailed EAB a timely request to reopen the July 31, 2017 hearing, and mailed OAH a timely request to reopen the October 16, 2017 hearing. Finally, claimant failed to assert or show that he re-mailed the application for review form to EAB within seven days after he received it in the mail. Absent such a showing, we cannot find that claimant filed his application for review within a “reasonable time” as defined under OAR 471-041-0050(2)(b).

Claimant therefore failed to establish good cause to extend the period for filing his application for review of Hearing Decision 17-UI-98407 to January 10, 2018. His late application for review of Hearing Decision 17-UI-98407 therefore is dismissed.

DECISION: The application for review filed January 10, 2018 is dismissed. Hearing Decision 17-UI-98407 remains undisturbed.

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

DATE of Service: January 23, 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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