

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0062

Late Application for Review Dismissed

PROCEDURAL HISTORY: On November 16, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 140001). Claimant filed a timely request for hearing. On December 19, 2017, ALJ Murdock conducted a hearing, and on December 21, 2017 issued Hearing Decision 17-UI-99563, affirming the Department’s decision. On January 10, 2018, Hearing Decision 17-UI-99563 became final without claimant having filed an application for review. On January 17, 2018, claimant filed a late application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Claimant’s application for review of Hearing Decision 17-UI-99563 is dismissed as untimely without good cause.

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).

With her late application for review, claimant included a written statement that she understood it was late, but that on January 16, 2018, she received documentation in the mail from the Oregon Department of Human services that proves the employer’s witness lied to the ALJ about claimant’s work separation. However, although claimant’s failure to receive that documentation until after the deadline for filing her application for review may have been a circumstance beyond her reasonable control, it did not *prevent* her from filing a timely application for review of Hearing Decision 17-UI-99563 to EAB, as required for a showing of good cause under OAR 471-040-0070(2)(a). Had claimant done so, she would have had at least 20 days to submit written argument¹ and offer any new information under OAR 471-040-0090(2) (October 29, 2006), under which new, relevant and material information may be considered when

¹ See OAR 471-041-0080(1) (October 29, 2006).

factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing.

Claimant's application for review of Hearing Decision 17-UI-99563 therefore is dismissed as untimely without good cause.

DECISION: The application for review filed January 17, 2018 is dismissed. Hearing Decision 17-UI-99563 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.