

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0120

Application for Review Dismissed

PROCEDURAL HISTORY: On November 29, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 71316). On December 4, 2017, the employer filed a timely request for hearing. On December 29, 2017, ALJ Monroe conducted a hearing, and on January 3, 2018 issued Hearing Decision 18-UI-100134, affirming the Department's decision. On January 23, 2018, Hearing Decision 18-UI-100134 became final without the employer having filed a timely application for review. On February 5, 2018, the employer filed a late application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: The employer received Hearing Decision 18-UI-100134 on or before January 8, 2018 and decided to file an application for review. On January 8, 2018, the employer signed an application for review form to request that EAB review the hearing decision. On January 9, 2018 at 3:01 p.m., the employer attempted to fax the application for review form to EAB's fax number. The employer's fax machine did not transmit the application for review form to EAB; the transmittal report recorded that the result of the attempt was "NG" rather than "OK," and the transmittal report stated that "NG" meant "poor line condition/out of memory." See Employer's argument. On February 5, 2018, the employer noticed that the application for review form had not been transmitted to EAB, and immediately re-faxed the application for review form with transmittal report from the failed attempt.

CONCLUSIONS AND REASONS: The employer's late application for review should be dismissed; Hearing Decision 18-UI-100134 therefore remains undisturbed.

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, among other things, upon a showing of "good cause." OAR 471-041-0070(2). The employer must prove "good cause" by establishing "that factors or circumstances beyond the applicant's reasonable control prevented timely filing." OAR 471-040-0070(2)(a).

The circumstances that resulted in the employer filing a late application for review in this case do not establish that the employer had good cause to extend the 20-day filing period. The only thing that

appears to have “prevented” the employer from filing a timely application for review was the employer’s failure to notice that its fax machine did not transmit the January 8, 2018 fax to EAB. However, it was well within the employer’s reasonable control to verify that his fax machine transmitted the application for review form by checking the transmittal report at the time of the initial fax attempt, or sometime prior to the date the hearing decision became final, or, failing that, to contact EAB to verify that the attempted fax was received. Because the employer did not establish good cause to extend the filing period in this case, the employer’s late application for review must be dismissed.

DECISION: The application for review filed February 5, 2018 is dismissed. Hearing Decision 18-UI-100134 remains undisturbed.

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

DATE of Service: February 7, 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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