

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0221**

*Late Application for Review Dismissed*

**PROCEDURAL HISTORY:** On September 13, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for an act that disqualified him from receiving benefits (decision # 111530). Claimant filed a timely request for hearing. On September 27, 2017, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for October 11, 2017. On October 11, 2017, claimant failed to appear at the hearing, and ALJ M. Davis issued Hearing Decision 17-UI-94307, dismissing claimant's request for hearing due to his failure to appear. On October 31, 2017, Hearing Decision 17-UI-94307 became final without claimant having filed a request to reopen the hearing, or an application for review with the Employment Appeals Board (EAB). On November 3, 2017, claimant filed a late request to reopen the hearing. On November 7, 2017, ALJ Kangas issued Hearing Decision 17-UI-96349, dismissing claimant's request to reopen the hearing as untimely without a showing of good cause. On November 27, 2017, Hearing Decision 17-UI-96349 became final without claimant having filed an application for review with EAB. On March 1, 2018, claimant filed a late application for review with EAB.

**CONCLUSIONS AND REASONS:** Claimant's late application for review of Hearing Decision 17-UI-96349 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 471-041-0050(2)(b).

Here, OAH mailed Hearing Decision 17-UI-96349 to claimant on November 7, 2017. Claimant did not file his application for review of that decision until March 1, 2018, over three months after the November 27, 2017 filing deadline. In his application for review, claimant indicated that he was incarcerated from November 6, 2017 through January 8, 2018 and in "Rehab" from January 8 through

February 5, 2018, which we construe as an assertion that he therefore was prevented from filing a timely application for review. However, claimant failed to explain why he did not file his application for review until March 1, 2018, twenty-four days after he apparently was released from rehab. Absent such an explanation, claimant failed to show that he filed his application within the required “reasonable time,” seven days after the circumstances that allegedly prevented a timely filing ceased to exist. Claimant’s late application for review of Hearing Decision 17-UI-96349 therefore is dismissed.

**DECISION:** The application for review filed March 1, 2018 is dismissed. Hearing Decision 17-UI-96349 remains undisturbed.

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

**DATE of Service: March 5, 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](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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