

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0348-R

Request for Reconsideration Dismissed

PROCEDURAL HISTORY: On November 17, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, not for misconduct (decision # 143515). The employer filed a timely request for hearing. On February 2, 2018, ALJ Janzen conducted a hearing, and on March 15, 2018 issued Amended Order No. 18-UI-105295, concluding that the employer discharged claimant for misconduct. On April 4, 2018, Order No. 18-UI-105295 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On April 5, 2018, claimant filed a late application for review with EAB. On April 10, 2018, EAB issued EAB decision 2018-EAB-0348, dismissing claimant's late application for review. On April 12, 2018, claimant filed a timely request for reconsideration.

CONCLUSIONS AND REASONS: Claimant's request for reconsideration of EAB decision 2018-EAB-0348 is dismissed.

ORS 657.290(3) gives EAB discretion to reconsider its prior decisions upon request by any party. However, 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." Claimant's request did not include a statement or otherwise indicate that claimant sent a copy of his request to the employer. The request is therefore dismissed for failure to comply with the rules governing requests for reconsideration.

Even if claimant's request for reconsideration were allowed, EAB would, on reconsideration, adhere to EAB Decision 2018-EAB-0348. OAR 471-041-0145 states that "Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice." EAB Decision 2018-EAB-0348 dismissed claimant's late application for review of Order No. 18-UI-105295 because the application for review did not contain a written statement describing the circumstances that prevented a timely filing, as required under OAR 471-041-0073(3) (February 18, 2012). Claimant did not assert or show that EAB Decision 2018-EAB-0348 contains an error of material fact or law based on the record before it.

In his request for reconsideration, claimant asserted that he filed his application for review late because his father “was in the hospital. He had a major heart attack, pneumonia & sepsis.” However, even if claimant had included that statement in his application for review, it still would have been 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).

Here, claimant failed to explain when his father was hospitalized, if he was discharged, if so when, or how his father’s hospitalization interfered with his ability to file a timely application for review. Absent such information, claimant failed to show that his father’s hospitalization prevented claimant from filing a timely application for review. Claimant therefore failed to establish good cause for filing a late application for review, which therefore is subject to dismissal.

DECISION: Claimant’s request for reconsideration is dismissed. EAB Decision 2018-EAB-0348, which dismissed claimant’s late application for review of Order No. 18-UI-105295, remains undisturbed.

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

DATE of Service: April 24, 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.