

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0367

Late Application for Review Allowed
Order No. 18-UI-105132 Reversed & Remanded

PROCEDURAL HISTORY: On February 2, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work for the employer with good cause (decision # 143542). The employer filed a timely request for hearing. On February 27, 2018, the Office of Administrative Hearings (OAH) served, by mail, notice of a hearing scheduled for March 13, 2018. On March 13, 2018, ALJ Meerdink conducted a hearing, and on March 14, 2018 issued, and OAH served by mail, Order No. 18-UI-105132 concluding that claimant quit work for the employer without good cause. On April 3, 2018, Order No. 18-UI-105132 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On April 13, 2018, claimant filed a late application for review with EAB.

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 18-UI-105132 is allowed. Order No. 18-UI-105132 is reversed, and this matter remanded for a hearing on whether claimant's is entitled to another hearing on the merits of decision # 143542 and, if so, whether he should be disqualified from receiving benefits based on a work separation from the employer.

The first issue before EAB is whether claimant's late application for review of Order No. 18-UI-105132 should be allowed. 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).

Claimant filed his application for review of Order No. 18-UI-105132 ten days late. In his April 13, 2018 written argument, claimant stated that he did not receive Order No. 18-UI-105132 in time to file a timely application for review because he has been out of the country for the last 6 weeks and did not receive Order No. 18-UI-105132 in the mail until he returned. Department records show that claimant last

claimed benefits on March 5, 2018.¹ Claimant therefore was likely out of the country and not claiming benefits when the March 13, 2018 hearing was held, Order No. 18-UI-105132 was mailed on March 14, 2018, and the period for filing a timely application for review of that order expired on April 3, 2018. It also means that claimant likely filed his application for review within seven days after he returned from abroad and personally received Order No. 18-UI-105132 in the mail. We therefore conclude that factors and circumstances beyond claimant's reasonable control prevented a timely filing, and that claimant filed his application for review within a reasonable time. Claimant's late application for review therefore is allowed.

In support of his application for review, claimant asserted that he failed to appear at the March 13, 2018 hearing for similar reasons. According to claimant, he did not receive notice that the employer had requested a hearing on decision # 143542 or the February 27, 2018 notice of hearing in time to appear because he did not claim benefits while abroad, and did not receive notice that the employer had requested a hearing, or that a hearing had been scheduled and held, until he returned. Claimant's request for relief is construed as a request for EAB to consider new information under OAR 471-040-0090 (October 29, 2006), which states that new, relevant and material information may be considered if the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing.

Claimant's explanation for his failure to appear at the March 13, 2018 hearing suggests that circumstances beyond his reasonable control prevented him from doing so. However, further inquiry is required into the facts necessary for a determination of that issue, including, but not limited to, the date claimant left his residence to travel abroad, the date he last checked his mail before leaving, whether he was experiencing delays in receiving his mail at that time, and the date claimant returned from abroad and to his residence. Order No. 18-UI-105132 therefore is reversed, and this matter remanded for a hearing on whether claimant is entitled to another hearing on the merits of decision # 143542 and, if so, whether he should be disqualified from receiving benefits based on a work separation from the employer.

DECISION: Order No. 18-UI-105132 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: April 27, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-105132 or return this matter to EAB. Only a timely application for review of the subsequent Order No. will cause this matter to return to EAB.

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

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.