

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0425

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On October 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 84816). On October 24, 2017, the Department served notice of another administrative decision, based on decision # 84816, assessing a \$2,913 overpayment, \$436.95 monetary penalty and 20 penalty weeks (decision # 200237). Claimant filed timely requests for hearing on both decisions. On December 22, 2017, ALJ Shoemake conducted two hearings, and on December 29, 2017 issued Order No. 17-UI-99956, affirming decision # 84816, and Order No. 17-UI-99965, affirming decision # 200237. On January 18, 2018, Order Nos. 17-UI-99956 and 17-UI-99965 became final without claimant having filed timely applications for review. On April 26, 2018, claimant filed late applications for review of both decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 17-UI-99956 and 17-UI-99965. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0424 and 2018-EAB-0425).

CONCLUSIONS AND REASONS: Claimant's applications for review of Order Nos. 17-UI-99956 and 17-UI-99965 should be dismissed.

ORS 657.270(6) required claimant's applications for review to be filed no later than January 18, 2018; they were filed on April 26, 2018, as shown by the receipt date stamped on the faxed document received by EAB. OAR 471-041-0065 (October 29, 2006). OAR 471-041-0070 (October 29, 2006) provides:

- (1) An application for review is timely if it is filed within 20 days of the date that OAH mailed the hearing decision sought to be reviewed. EAB shall dismiss a late application for review, unless the filing period is extended in accordance with this rule.
- (2) The filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875.
 - (a) "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing.

(b) "A reasonable time" is seven days after the circumstances that prevented timely filing ceased to exist.

(3) The applicant shall include with the application for review a written statement describing the circumstances that prevented a timely filing. ***

Claimant wrote on his application for review, "This is the Third Request, I've never heard anything the previous two attempts." (Emphasis in original.) He did not provide any additional information, however, such as what he sent the two times he previously sent "requests," where he sent them, or what he said. We have reviewed EAB's records, as well as the Department's and Office of Administrative Hearings' records available to us, and have found no indication of claimant previously having filed applications for review of the two orders at issue. In the absence of evidence of timely applications for review in these cases, we must conclude that claimant's only applications for review of the two orders at issue were the April 26th late applications.

In order for EAB to allow claimant's late applications for review, claimant must show, through a written statement submitted at the time he filed his late applications for review, that he missed the January 18, 2018 deadlines due to factors or circumstances beyond his reasonable control, and that he filed the late applications for review within seven days of when those circumstances ceased to exist. Claimant did not provide any such information with his applications for review; claimant has not established that the filing deadlines in these two cases may be extended, and claimant's applications for review therefore must be dismissed.

DECISION: The applications for review filed April 26, 2018 are dismissed. Order Nos. 17-UI-99956 and Order No. 17-UI-99965 remain undisturbed.

DATE of Service: April 30, 2018

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

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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