

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0434**

*Application for Review Dismissed*

**PROCEDURAL HISTORY:** On June 13, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 103007). Claimant filed a timely request for hearing. On August 18, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for September 1, 2017, at which time claimant failed to appear. On September 1, 2017, ALJ L. Lee issued Order No. 17-UI-91754, dismissing claimant's hearing request for failure to appear. On September 21, 2017, Order No. 17-UI-91754 became final without claimant having filed a timely request to reopen the hearing. On March 26, 2018, claimant filed a late request to reopen the September 1<sup>st</sup> hearing. On March 30, 2018, ALJ Kangas reviewed claimant's request and issued Order No. 18-UI-106352, denying claimant's late request to reopen. On April 19, 2018, Order No. 18-UI-106352 became final without claimant having filed an application for review. On April 30, 2018, claimant filed a late application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Claimant did not establish good cause to file an untimely application for review, and his application for review therefore is dismissed.

ORS 657.270(6) required claimant's application for review to be filed no later than April 19, 2018; it was filed on April 30, 2018, as shown by the receipt date stamped by the employee who received claimant's faxed application. 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.

With his application for review, claimant stated that he “was encouraged to apply for a late appeal . . . following receipt of recent letter referencing a form which was not included in the envelope.” Claimant did not explain which letter he received, or what form was missing from the envelope, but we infer that the letter was probably Order No. 18-UI-106352 denying his late request to reopen. The Appeal Rights advisory on Order No. 18-UI-106352 stated,

You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed. See ORS 657.270(4) [*sic*]. If you have questions, please refer to the enclosed publication ‘Rights of Review of a Hearing Decision’ (UI Pub 15). If you did not receive a copy of ‘Rights of Review of a Hearing Decision’ with this decision, call the Office of Administrative Hearings . . . to request a copy.

See Order No. 18-UI-106352 at 3. There is no evidence suggesting anything else was or should have been included in the envelope with the Order in this case; we therefore infer that the form missing from claimant’s envelope was likely either the “form Application for Review” or the “Rights of Review of a Hearing Decision” document.

Although it is likely that one or both of those documents might have been missing from the envelope in which OAH mailed claimant a copy of the Order in this case, claimant did not explain why omission of either form from the envelope prevented him from filing a timely application for review in this case. Page 3 of the Order still advised claimant that he had 20 days to file an application for review, and the “certificate of mailing” page stated that “Any appeal from this Order must be filed on or before April 19, 2018 to be timely,” suggesting that claimant was or should have been aware of his right to appeal the Order and of the appeal deadline. Page 3 of the Order also advised claimant that he should contact OAH if the “Rights of Review” document was missing from the Order, and there is nothing in claimant’s application for review suggesting that reading the Appeal Rights advisory and calling OAH – within the 20-day appeal period – was beyond his reasonable control. Good cause has not been shown.

Even if claimant had established “good cause” to extend the filing period in this case, his application for review would still have to be dismissed because he did not establish that he filed the late application for review within the seven-day “reasonable time” period after the circumstances that prevented a timely filing ceased to exist. In order to do that, claimant would have had to explain with some specificity what prevented his timely filing (*i.e.*, which form was missing and why that prevented a timely filing), explain what date that circumstance ceased to exist, and show that he filed his late application for review within seven days of that date. Because he did not do so, we cannot conclude that he filed the late application for review within a “reasonable time,” and his application for review must be dismissed.

**DECISION:** The application for review filed April 30, 2018 is dismissed. Order No. 18-UI-106352 remains undisturbed.

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

**DATE of Service: May 3, 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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