

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0461

Application for Review Dismissed

PROCEDURAL HISTORY: On March 8, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for a disqualifying act (decision # 132512). Claimant filed a timely request for hearing. On April 3, 2018, ALJ Seideman conducted a hearing, and on April 6, 2018 issued Order No. 18-UI-106874, affirming the Department's decision. On April 26, 2018, the ALJ's Order became final without claimant having filed a timely application for review with the Employment Appeals Board (EAB). On April 30, 2018, claimant filed a late application for review with EAB.

EAB considered claimant's argument when reaching this decision.

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

ORS 657.270(6) required claimant's application for review to be filed no later than April 26, 2018; it was filed by fax on April 30, 2017, as shown by the receipt date stamped on it by the employee who received the document. 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 her application for review, claimant wrote, "I was unable to get this to you within the 20 days, due to my husband undergoing Chemotherapy twice during the month of April, however I am able to get this faxed within the following 7 day filing period, showing good cause." However, an individual does not show "good cause" merely by filing an application for review less than seven days late, they must show "good cause" by proving that factors or circumstances beyond their reasonable control prevented a timely filing, and then file within a "reasonable time" of when those factors or circumstances ceased to exist. In this case, claimant did not explain when her husband's chemotherapy sessions were, what her involvement with them was, why her husband's sessions occurring twice during the month of April prevented claimant from filing an application for review – which, at its simplest, involves completing a one-page form enclosed with the hearing decision and sending it to EAB by mail, fax or delivery – during the 20-day period ending April 26th, much less explain how those circumstances amounted to factors or circumstances beyond her reasonable control that prevented a timely filing. Absent such showings, good cause to extend the filing deadline has not been established and claimant's application for review is dismissed.

DECISION: The application for review filed April 30, 2018 is dismissed. Order No. 18-UI-106874 remains undisturbed.

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

DATE of Service: May 7, 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.