

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0663

Application for Review Dismissed

PROCEDURAL HISTORY: On September 21, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a 52-week penalty disqualification from future benefits otherwise payable (decision # 193671). Claimant's request for hearing was construed as late. On November 22, 2017, ALJ R. Frank conducted a hearing, and on November 28, 2017 issued Order No. 17-UI-97694, dismissing claimant's request for hearing as late without good cause. On March 13, 2018, claimant filed an application for review with the Employment Appeals Board (EAB) that was construed as late. On March 19, 2018, EAB issued Appeals Board Decision 2018-EAB-0258, allowing claimant's late request for hearing and reversing Order No. 17-UI-97694 and finding claimant was entitled to a hearing on the merits of decision # 193671. On May 10, 2018, ALJ R. Frank conducted a hearing, and on June 8, 2018 issued Order No. 18-UI-111021, affirming decision # 193671. On June 28, 2018, Order No. 18-UI-111021 became final without claimant having filed a timely application for review. On July 3, 2018, claimant filed a late application for review by fax.

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

ORS 657.270(6) required claimant's application for review to be filed no later than June 28, 2018; it was filed on July 3, 2018, as shown by the receipt date stamped upon claimant's faxed documents by the employee who received them. 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.

Claimant stated with her application for review that she "mailed original request from outside mailbox on 6/27/18." Documents mailed through the U.S. Postal Service are only considered "filed" when they are postmarked. *See* OAR 471-041-0065. Claimant did not explain what kind of mailbox she used, when she deposited the application for review in it, when mail from that mailbox was generally collected, or when mail from that mailbox was general postmarked. Claimant has therefore failed to prove that it is more likely than not that what she mailed on June 27th she mailed an application for review was postmarked on or before June 28th, and therefore "filed" within the time allowed. The application for review claimant "filed" with EAB was filed by fax on July 3, 2018, which is five days late. Claimant has not alleged or proven that factors or circumstances beyond her reasonable control prevented her from filing within the time allowed, and the late application for review in this case must, therefore, be dismissed.

DECISION: The application for review filed July 3, 2018 is dismissed. Order No. 18-UI-111021 remains undisturbed.

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

DATE of Service: July 13, 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.

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