

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0779

Late Application for Review Dismissed

PROCEDURAL HISTORY AND FINDINGS OF FACT: On February 16, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not entitled to Trade Readjustment Act (TRA) benefits from December 17, 2017 to February 3, 2018 (decision # 142910). Claimant filed a timely request for hearing. On April 3, 2018, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for April 18, 2018. On April 18, 2018, claimant failed to appear at the hearing, and ALJ Frank issued Order No. 18-UI-107635, dismissing claimant's request for hearing due to her failure to appear. Claimant filed a timely request to reopen the hearing. ALJ Kangas considered claimant's request, and on April 26, 2018 issued Order No. 18-UI-108162, denying the request. On May 16, 2018, Order No. 18-UI-108162 became final without claimant having filed an application for review with the Employment Appeals Board (EAB).

On May 31, 2018, the Department served notice of an administrative decision, based on decision # 142910, concluding that claimant was overpaid \$3,204 in TRA benefits that she must repay the Department (overpayment decision). On July 18, 2018, claimant faxed EAB a copy of the overpayment decision along with a written statement asserting, in relevant part, that she had faxed the same document to OAH on June 14, 2018. Claimant did not request a review of Order No. 18-UI-108162, otherwise express an intent to appeal the order, or describe the circumstances, if any, that prevented a timely filing of an application for review. On July 24, 2018, EAB mailed claimant a letter and copied, with enclosures, the OAH and the Department's Overpayment Unit. The letter stated as follows:

EAB could not determine from claimant's fax what she wanted EAB to do. If claimant's intent was to ask for a waiver of the overpayment, EAB was forwarding a copy of the document to the OED Overpayment Unit for review, and claimant should contact the OED Overpayment Unit at 800-553-5396 if she had any questions about how to request a waiver. If claimant's intent was to appeal Order No. 18-UI-108162, she needed to file an application for review with EAB by filling out and returning the enclosed Application for Review form. If claimant's intent was to request a hearing on the overpayment decision and/or possible overpayment waiver denial, EAB was forwarding a copy of claimant's document to OAH for review, and claimant should contact OAH at 800-311-3394 if she had any questions about a hearing.

On August 10, 2018, claimant faxed EAB the Application for Review form along with the document she faxed to EAB on July 18, 2018. Claimant did not describe the circumstances, if any, that prevented a timely filing of an application for review of Order No. 18-UI-108162. OAR 471-040-0070(3). On August 13, 2018, claimant re-faxed EAB the documents she had faxed on August 10, 2018 along with a copy of EAB's July 24, 2018 letter to her and a written statement asserting, in relevant part, that she had faxed "an appeal" on June 14, 2018 and July 18, 2018. Claimant again failed to describe the circumstances, if any, that prevented a timely filing of an application for review of Order No. 18-UI-108162.

CONCLUSIONS AND REASONS: Claimant filed a late application for review of Order No. 18-UI-108162 on August 10, 2018. Claimant's application for review is dismissed as untimely without a showing of good cause.

An application for review may be filed on forms provided by OAH or the Department and other similar offices in other states. OAR 471-041-0060(1) (January 8, 2008). Use of the form is not required, provided the party requests review of a specific hearing order, or otherwise expresses intent to appeal a specific hearing order. *Id.* An application for review may be filed in person, by mail or by fax to EAB, or any office of the Department, including OAH. OAR 471-041-0060(2).

An application for review is timely if it is filed within 20 days of the date that OAH mailed the hearing order sought to be reviewed. 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). The applicant shall include with the application for review a written statement describing the circumstances that prevented timely filing. OAR 471-040-0070(3).

The first issue in this case is the date, if any, claimant filed an application for review of Order No. 18-UI-108162. Claimant faxed EAB a copy of the overpayment decision along with a written statement on July 18, 2018, and may have faxed the same document to OAH on June 14, 2018. However, she did not express an intent to appeal Order No. 18-UI-108162 until August 10, 2018, the date on which she faxed EAB the Application for Review form that EAB had instructed her to fill out and return if her intent was to appeal the order. We therefore conclude that claimant filed a late application for review of Order No. 18-UI-108162 on August 10, 2018. However, even if claimant had filed an application for review on July 18 or June 14, 2018, the outcome of this decision would remain the same. Claimant's application for review still would be late, and claimant did not describe the circumstances, if any, that prevented a timely filing.

Claimant's application for review of Order No. 18-UI-108162 therefore is dismissed as untimely without a showing of good cause. However, if claimant also intended to request a hearing on the overpayment decision, she should contact OAH at 800-311-3394 with any questions about a hearing. If claimant intended to ask for a waiver of the overpayment, she should contact the OED Overpayment Unit at 800-553-5396 if she had any questions on how to request a waiver.

DECISION: The application for review filed August 10, 2018 is dismissed. Order No. 18-UI-108162 remains undisturbed.

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

DATE of Service: August 16, 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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