

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0805

Application for Review Dismissed

PROCEDURAL HISTORY AND FINDINGS OF FACT: On June 7, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 100012). Claimant filed a timely request for hearing. On July 3, 2018, ALJ R. Frank conducted a hearing, and on July 10, 2018 issued Order No. 18-UI-112843, affirming the Department's decision. On July 30, 2018, Order No. 18-UI-112843 became final without claimant having filed a timely application for review with the Employment Appeals Board (EAB). On August 13, 2018, claimant filed a late application for review with EAB.

CONCLUSIONS AND REASONS: Claimant did not establish that he filed his application for review within a reasonable time, and his application for review must therefore be dismissed.

Claimant's August 13th application for review stated that it was his "second request to appeal the denial of my unemployment benefits claim," he "original [*sic*] sent the form after July 20th when I received the notification" and when he did not "receive a notice of a new hearing" he contacted EAB and "was told they hadn't received anything from me" and "to send a copy of the Application for Review again along with this letter of explanation."

Claimant did not establish that he timely filed an application for review. His statement did not specify when he sent in the original form, or where he sent it. The application for review form he re-sent was not signed or dated, and therefore did not suggest that he had previously sent that form to EAB or on what date he had sent it. Claimant's assertion that he previously sent an application for review form is therefore inadequate to prove that he "filed" the form within the meaning of OAR 471-041-0060, or that he "filed" the form in a timely manner within the meaning of OAR 471-041-0065.

Claimant's August 13th application for review was filed late. OAR 471-041-0070(2) (October 29, 2006) provides:

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.

Even if we assumed for the sake of argument that claimant's apparently failed first attempt to file an application for review was the result of factors or circumstances beyond his reasonable control, OAR 471-041-0070(2)(b) provides that individuals filing late applications for review must also prove that they filed the late application within "a reasonable time," which is seven days after the circumstances that prevented timely filing ceased to exist. In this case, the circumstances that prevented a timely filing likely would have ended when claimant discovered that his initial attempt to file an application for review had failed. However, claimant did not state what date he discovered that his first attempt to file an application for review had failed, and therefore failed to establish that his August 13th late filing occurred within seven days of that date. He therefore did not establish that he filed his late application for review within the seven-day "reasonable time" period required by law, and his late application for review must be dismissed.

DECISION: The application for review filed August 13, 2018 is dismissed. Order No. 18-UI-112843 remains undisturbed.

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

DATE of Service: August 24, 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.