

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0990

Late Application for Review Dismissed

PROCEDURAL HISTORY: On October 26, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 82434). Claimant filed a timely request for hearing. On November 21, 2017, ALJ Frank conducted a hearing, and on November 29, 2017 issued Order No. 17-UI-97770, affirming the Department's decision. On December 19, 2017, Order No. 17-UI-97770 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On October 9, 2018, claimant filed a late application for review with EAB.

FINDINGS OF FACT: (1) The Office of Administrative Hearings (OAH) mailed claimant notice of Order No. 17-UI-97770 on November 29, 2017. Claimant received the notice. At that time, claimant decided to stop claiming benefits, and not file an application for review of Order No. 17-UI-97770 with EAB.

(2) On October 9, 2018, claimant filed a late application for review of Order No. 17-UI-97770 because, over two months earlier, an arbitrator had ordered that claimant be reinstated to work for the employer and denied the employer's motion to reconsider.

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 17-UI-97770 is dismissed.

An application for review is timely if it is filed within 20 days of the date that OAH mailed the decision for which review is sought. 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).

To be timely, claimant needed to file his application for review of Order No. 17-UI-97770 no later than December 19, 2017. It was filed on October 9, 2018, almost 10 months late. When claimant received notice of Order No. 17-UI-97770 in the mail, he decided to stop claiming benefits, and not file an

application for review with EAB. However, claimant did not assert or show that it was beyond his reasonable control to file a timely application for review, and therefore failed to establish good cause to extend the filing period. Claimant's late application for review of Order No. 17-UI-97770 is dismissed.

DECISION: The application for review filed October 9, 2018 is dismissed. Order No. 17-UI-97770 remains undisturbed.

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

DATE of Service: November 5, 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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