

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1019

Application for Review Dismissed

FINDINGS OF FACT AND PROCEDURAL HISTORY: On July 23, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from June 3, 2018 to June 9, 2018 (decision # 80718). Claimant filed a timely request for hearing. On August 7, 2018, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for August 20, 2018 at 2:30 p.m., at which time claimant failed to appear at the hearing. On August 21, 2018, ALJ Janzen issued Order No. 18-UI-115271, dismissing claimant's request for hearing for failure to appear. On September 5, 2018, claimant filed a timely request to reopen the August 20th hearing. ALJ Kangas reviewed claimant's request to reopen, and on September 12, 2018 mailed Order No. 18-UI-116451, denying claimant's request to reopen, to claimant's address of record. On October 2, 2018, Order No. 18-UI-116451 became final without claimant having filed a timely application for review with the Employment Appeals Board (EAB). On October 24, 2018, claimant filed a late application for review with EAB.

EAB considered claimant's argument when reaching this decision.

CONCLUSIONS AND REASONS: Claimant's application for review should be dismissed.

ORS 657.270(6) required claimant's application for review to be filed no later than October 2, 2018; it was filed on October 24, 2018. 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.

In other words, to establish that the filing deadline in this case should be extended, claimant has the burden to prove both that she has good cause to extend the filing period, and that she filed her late application for review within a reasonable time. Claimant did not meet her burden.

Claimant stated with her application for review, "On September I faxed a request for a hearing I never heard back, so on Oct. 24, I called EBD. I was informed that a letter was sent, but I did not receive a letter." It appears probable that claimant's September "request for hearing" was actually her request to reopen and the "letter" claimant did not receive is likely notice of Order No. 18-UI-116451, which denied her request to reopen. It therefore appears that claimant's argument is that she did not file a timely application for review in this case because she did not receive notice of Order No. 18-UI-116451.

Notice of Order No. 18-UI-116451 was mailed to claimant at her address of record. It is more likely than not that that is still claimant's address, because it is the same address claimant typed onto the statement she submitted with her application for review. Generally speaking, documents sent through the U.S. Postal service are presumed to have been received by the addressee, subject to evidence to the contrary. OAR 137-003-0520(9). Claimant's bare assertion of non-receipt is therefore insufficient to overcome the presumption of receipt. It is therefore more likely than not that notice of Order No. 18-UI-116451 was mailed to and received at claimant's correct address.

Even if claimant had established her non-receipt of Order No. 18-UI-116451, her statement did not explain why she waited over a month and a half between faxing her request to reopen to OAH and calling EAB when she "never heard back." Claimant did not explain why she did not follow up on her request to reopen when she had not heard any response to it for over one and one-half months after sending it. For instance, it only took OAH seven days after claimant initially requested a hearing on decision # 80718 to mail claimant notice of the August 20th hearing, and it only took OAH one day after the date of the hearing to mail claimant notice of Order No. 18-UI-115271, suggesting claimant did not have reason to think it would take over six weeks for OAH to respond to her request to reopen. Nor did claimant explain why she called EAB instead of OAH, if not because she was already aware that OAH had issued a decision in her case, and filing with EAB is the next step for review after an OAH decision.

In sum, EAB may only extend the deadline for filing an application for review for a seven day "reasonable time" period upon a showing of "good cause." Claimant filed her late application for review on October 24th. Absent evidence establishing that the circumstances that had prevented claimant from filing a timely application for review amounted to "good cause," and lasted until at least October 17th, she has not proven that her October 24th filing occurred within that seven day "reasonable time" period. Claimant's late application for review must therefore be dismissed.

DECISION: The application for review filed October 24, 2018 is dismissed. Order No. 18-UI-116451 remains undisturbed.

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

DATE of Service: October 26, 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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