

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1049

Application for Review Dismissed

PROCEDURAL HISTORY AND FINDINGS OF FACT: On September 4, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 123519). Claimant filed a timely request for hearing. On October 11, 2018, ALJ Janzen conducted a hearing, and on October 16, 2018 issued Order No. 18-UI-118238, affirming the Department's decision. On November 5, 2018, Order No. 18-UI-118238 became final without claimant having filed a timely application for review with the Employment Appeals Board (EAB). On November 6, 2018, claimant filed by fax a late application for review with EAB.¹

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

ORS 657.270(6) required claimant's application for review to be filed no later than November 5, 2018. Although claimant faxed her application for review to claimant on November 5th, she did so at 9:55 p.m. OAR 471-041-0065(1)(c) (October 29, 2006) establishes that the filing date of a faxed document is the receipt date stamped on the document by the public employee who received it, and also states, "EAB's normal business hours are Monday through Friday, 8:00 am to 5:00 pm, Pacific Time. If EAB receives a faxed document after 5:00 pm, or on a Saturday, Sunday or legal holiday, it will be marked as received the following business day." Because claimant's faxed application for review was received after business hours on November 5th, it was marked as received on November 6th, the following business day, and November 6th is therefore the "filing date" of claimant's application for review. Claimant's application for review was filed late.

ORS 657.270(6) only allows parties 20 days to file timely applications for review. However, under ORS 657.875, the 20-day time period may be extended upon a showing of "good cause." OAR 471-041-

¹ On November 7, 2018, EAB mailed a notice to the parties that claimant had "filed a timely Application for Review" with EAB. That notice was sent in error. Claimant's application for review was not timely for the reasons explained herein, the application for review is being dismissed, and, accordingly, EAB will not review the merits of this matter.

0070(2) defines “good cause” as “when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing.”

In a written statement claimant faxed shortly after her late application for review, claimant argued that she had “good cause” because “[i]llness prevented acting sooner, which includes sending to arrive in time without the expense of express service. The EAB provides a fax number, though I do not own a fax machine I have one to use in working order, however it did not work for me this p.m. until after the 5:00 p.m. deadline.”

It is clear from claimant’s statement that claimant believed her circumstances should be considered good cause to extend the 20-day filing period in this case. However, claimant’s statement did not prove by a preponderance of the evidence that she did, in fact, have good cause, because, for example, she did not explain why her illness prevented her from acting sooner, either earlier during the 20-day appeal period or earlier in the day on November 5th. She also did not explain what was wrong with the fax machine prior to the 5:00 p.m. deadline, what time she realized the fax machine would not work, or what she did to try to file a timely application for review or contact EAB about her difficulties filing a timely application for review once she realized the fax machine was not going to work.

Nor did claimant explain why she did not try to use another delivery method to file her application for review, especially after her attempt to use the fax machine prior to 5:00 p.m. did not work. Although claimant’s statement alluded to wanting to avoid “the expense of express service,” which we infer to mean the cost of sending something through express mail, claimant still had the option of personally delivering the application for review form to any Employment Department office or mailing the application for review through ordinary U.S. mail service, either of which, if done by November 5th, would have ensured that claimant’s application for review was timely filed.²

Absent a sufficient factual basis for EAB to independently determine whether or not the circumstances that caused claimant to file a late application for review amounted to good cause, claimant has failed to meet her burden to prove good cause. Claimant’s late application for review is, therefore, dismissed.

DECISION: The application for review filed November 6, 2018 is dismissed. Order No. 18-UI-118238 remains undisturbed.

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

DATE of Service: November 19, 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,

² Parties may file in person at any office of the Employment Department. OAR 471-041-0060(1). The filing date of a personally delivered document is the delivery date as evidenced by the receipt date stamped on the document. OAR 471-041-0065(1)(a). The filing date of a document mailed through the U.S. Postal Service is the postmark date. OAR 471-041-0065(1)(b). Thus, express delivery would be unnecessary to ensure that claimant’s application for review would be timely filed.

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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