

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1063

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On May 5, 2017, the Oregon Employment Department (the Department) served notice of administrative decision # 93556 concluding the employer suspended claimant for a disqualifying act and denying claimant benefits. On May 25, 2017, decision # 93556 became final without claimant having filed a timely request for hearing. On May 26, 2017, the Department served notice of another administrative decision, based on decision # 93556, assessing against claimant four penalty weeks of future benefits (decision # 193522). On June 15, 2017, decision # 193522 became final without claimant having filed a timely request for hearing. On September 20, 2018, claimant filed late requests for hearing on both decisions. On September 25, 2018, ALJ Kangas issued Orders No. 18-UI-117196 and 18-UI-117200, dismissing claimant's request for hearing on decisions # 93556 and 193522 as untimely without a showing of good cause, subject to his right to renew the requests by responding to appellant questionnaires by October 9, 2018. Claimant failed to respond to the appellant questionnaires. On October 15, 2018, Orders No. 18-UI-117196 and 18-UI-117200 became final without claimant having filed applications for review with the Employment Appeals Board (EAB). On October 18, 2018, claimant again filed late requests for hearing on both decisions decision # 93556 and # 193522. On October 29, 2018, OAH issued a letter advising claimant that OAH lacked jurisdiction over his October 29, 2018, late requests for hearing. On November 9, 2018, claimant filed late applications for review with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders 18-UI-117196 and 18-UI-117200. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-01063 and 2018-EAB-1064).

EAB considered the entire hearing record. With his application for review, claimant submitted a written argument containing information regarding his separation from the employer. However, that information is not relevant to EAB's determination of the issue before us, whether claimant had good cause for failing to file a timely application for review with EAB. We therefore did not consider claimant's written argument when reaching this decision. *See* OAR 471-040-0090 (October 29, 2006).

FINDINGS OF FACT: (1) OAH mailed claimant notice of Orders No. 18-UI-117196 and 18-UI-117200 on September 25, 2018. On October 15, 2018, Orders No. 18-UI-117196 and 18-UI-117200 became final without claimant having filed applications for review with EAB.

(2) On October 18, 2018, claimant filed a second late request for hearing on both decisions # 93556 and # 193522. On October 29, 2018, OAH issued a letter advising claimant that OAH did not have jurisdiction over his October 29, 2018, late requests for hearing, because Orders No. 18-UI-117196 and 18-UI-117200 became final on October 15, 2018.

(3) On November 9, 2018, claimant filed late applications for review with the EAB.

(4) With his application for review, claimant submitted a written argument, but did not explain why he failed to file a timely application for review with the EAB.

CONCLUSIONS AND REASONS: Claimant's late applications for review are 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). A "reasonable time" is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0050(2)(b). OAR 471-041-0065 (October 29, 2006). OAR 471-041-0070(3) requires that individuals filing late applications for review include with the late application "a written statement describing the circumstances that prevented a timely filing."

Claimant was required to file his applications for review of Orders No. No. 18-UI-117196 and 18-UI-117200 no later than October 15, 2018. They were filed on November 9, 2018. Claimant did not provide any explanation as to why he filed his applications 24 days after the filing deadlines expired. Because claimant's applications for review were filed after the 20-day deadline provided by ORS 657.270(6), and good cause to extend the time allowed has not been shown, the applications for review must be dismissed.

DECISION: The applications for review filed November 9, 2018 are dismissed. Orders No. 18-UI-117196 and 18-UI-117200, remain undisturbed.

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

DATE of Service: November 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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