

State of Wisconsin



Labor and Industry Review Commission

Laura L. Martin  
Employee

SL Bayshore Oshkosh LLC  
Employer

Hearing No. 20401617AP

Unemployment Insurance  
Decision

Dated and Mailed:

August 7, 2020

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The petition for commission review is **not dismissed**. Accordingly, commission **sets aside** the appeal tribunal decision and **remands** this matter for a decision on whether the employee's explanation for failing to appear for the hearing constitutes good cause.<sup>1</sup>

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

David B. Falstad, Commissioner

/s/

Georgia E. Maxwell, Commissioner

<sup>1</sup> Wis. Stat. §108.09(4)(d) and (e) provides that an appeal tribunal shall review whether the explanation for the failure to appear constitutes good cause.

### **Procedural Posture**

An administrative law judge (ALJ) of the Unemployment Insurance Division of the Department of Workforce Development issued a decision. The commission received a petition for commission review.

### **Memorandum Opinion**

A petition for commission review of an appeal tribunal decision must be received by the commission or postmarked within 21 days after that decision was electronically delivered to the party or mailed to the party's last-known address.<sup>2</sup>

The appeal tribunal decision was issued on June 10, 2020. That decision became final unless the employee filed a petition for review by July 1, 2020. The employee filed her petition for review on July 29, 2020. Therefore, the employee filed her petition late.

A late petition for review must be dismissed unless the petitioner shows "good cause that the reason for having failed to file the petition timely was beyond the control of the petitioner."<sup>3</sup> This is a very rigorous standard. Few reasons meet it and they are usually extraordinary.<sup>4</sup>

The employee states that she has spent a considerable amount of time trying to reach the department. However, because of the pandemic, she was unable to speak to a claims specialist until July 28, 2020. After speaking with the claims specialist, the employee was able to understand the issue involved and filed a late petition. The difficulty in reaching the department, given the pandemic and its impact upon the volume of unemployment claims, was beyond the employee's control.

The employee has shown good cause that her reason for having failed to file the petition timely was beyond her control. Accordingly, her petition is not dismissed.

NOTE: In her petition the employee explains she failed to appear at the hearing in this matter because she was working. The employee sent a fax, on June 12, 2020, requesting that her appeal be withdrawn. Because the employee, after speaking to the claims specialist, opted to file a late petition the commission infers that the employee no longer wishes to withdraw her appeal.

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<sup>2</sup> Wis. Stat. § 108.09(6)(a).

<sup>3</sup> *Id.*

<sup>4</sup> *Geyer v. Jimmy's*, UI Dec. Hearing No. 12200576EC (LIRC Apr. 16, 2015), citing *In re Jerome Kosmoski*, UI Dec. Hearing No. S9900245MW (LIRC March 22, 2000).