EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. MA-31-12

(MANAGEMENT SERVICE LAYOFF)

JEFFREY L. MARSHALL, Appellant, v. STATE OF OREGON, OREGON HEALTH AUTHORITY, Respondent.	)))))))))))	DISMISSAL ORDER

Jeffrey L. Marshall, Wilsonville, Oregon, appeared *pro se*.

Sylvia Van Dyke, Assistant Attorney General, Department of Justice, Salem, Oregon, represented Respondent.

In July 2012, the State of Oregon, Oregon Health Authority (OHA), notified management service employee Jeffrey L. Marshall (Appellant) that he would be laid off effective July 31, 2012, due to a reorganization. On October 24, 2012, Marshall filed an appeal of the layoff by faxing it to this Board's offices.

Pursuant to ORS 240.570(4), management service employees who are removed from management service due to reorganization or lack of work under ORS 240.570(2) may appeal to ERB in the manner provided in ORS 240.560. ORS 240.560(1) provides that

> "[t]he appeal must be in writing. The appeal is timely if it is received by the board or postmarked, if mailed postpaid and properly addressed, not later than 30 days after the effective date of the reduction, dismissal, suspension or demotion."

OAR 115-045-0005 also states that "[a]n appeal must be in writing and filed not later than 30 days after the effective date of the action being appealed."

Appellant appeals the elimination of his position, which occurred on July 31, 2012. Appellant's appeal was received by this Board on October 24, which is 85 days after the effective date of the layoff. Appellant stated in his appeal letter, "[f]irst of all, I am very sorry I was [*sic*] did not submit this within the 30 day window for appeals."

By letter dated October 25, 2012, the Administrative Law Judge (ALJ) asked Appellant to show cause why the appeal should not be dismissed as untimely. On October 29, 2012, Appellant provided the ALJ with a copy of an e-mail that he had previously sent to this Board on August 22, 2012. That e-mail stated:

> "Hello, my name is Jeffery Marshall and I was recently laid off from the Oregon Health Authority. I have worked for the State of Oregon since September 1998. My most recent position was the Budget Administrator for Public Health Programs. This position was 'eliminated' July 31st, 2012 and I am now out of work.
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> "I strongly feel this was handled poorly and possibly illegally since the stated reasons for the position elimination are not accurate. I also feel I was retaliated against for my honesty.
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> "I am a little confused about how to proceed with a possible complaint. I understand I need to fill out a form and cite an area from ORS 243.672 which I feel has been violated.
>
> "Any advice you could provide would be appreciated."
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> A Board employee responded to Marshall by e-mail on August 22, 2012, stating:
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> "Please review the process for filing an appeal under the State Personnel Relations Law (SPRL). There are details and instructions on our website at http://cms.oregon.gov/ERB/pages/advice.aspx. Please let me know if you have any further questions. Please do note there are timelines to follow."

Appellant argues that his August 22 e-mail should be considered by this Board as a timely appeal of his layoff. However, Marshall's statement in the August 22 e-mail simply asked for information and advice. In the e-mail, Marshall states he is confused about how to file an appeal and asks for advice on "how to proceed with a *possible* complaint." (Emphasis added.) After a Board employee responded to Marshall's request for assistance by providing him with a link to our website regarding SPRL appeals, Appellant was aware that the Board employee had interpreted his August 22 e-mail as merely a request for information. At that point, Marshall still had eight days within which he could have filed an appeal in a timely manner. However, he took no action in regard to an appeal at that time. Instead, he waited until October 24 to notify this Board of his intent to file an appeal while, in the same letter, apologizing for failing to file the appeal within the 30-day time limit.

Based on these circumstances, we conclude that Marshall's appeal filed on October 24, 2012, is untimely as it was not filed within the 30-day limitation period established by ORS 240.560(1). Therefore, the appeal will be dismissed as untimely.

ORDER

The appeal is dismissed.

DATED this 28 day of December, 2012.

Susan Rossiter

Susan Rossiter, Chair

Kathryn A. Logan

Kathryn A. Logan, Board Member

Jason M. Weyand, Board Member

This Order may be appealed pursuant to ORS 183.482.