

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0497

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On August 8, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from August 5, 2012 to August 3, 2013 (decision # 125353). On August 28, 2013, decision # 125353 became final without a request for hearing having been filed. On September 6, 2013, the Department served notice of an administrative decision (decision # 193529) assessing a \$23,019 overpayment, \$3,452.85 in monetary penalties and 52 penalty weeks based on decision # 125353. On September 26, 2013, decision # 193529 became final without a request for hearing having been filed. On October 8, 2013, claimant filed a late request for hearing. On November 4, 2014, ALJ Kangas issued Hearing Decision 13-UI-03887, dismissing claimant's request for hearing as untimely, subject to claimant's "right to renew" the request by submitting a response to the "Appellant Questionnaire" attached to the hearing decision within 14 days of the date the decision was mailed.¹ On November 7, 2013, the Office of Administrative Hearing (OAH) received claimant's response. On February 13, 2014, OAH issued notice of a hearing scheduled for March 4, 2014 at 10:45 a.m. On March 4, 2014, ALJ Holmes-Swanson conducted a hearing at which claimant appeared and testified, and on March 11, 2014, issued Hearing Decision 14-UI-12027, re-dismissing claimant's late request for hearing. On March 31, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

In claimant's written argument, claimant included information that was not part of the hearing record. Claimant failed to certify that a copy of the written argument was provided to the other parties as required. Under ORS 657.275 (2), OAR 471-041-0080 (October 29, 2006), and OAR 471-041-0090 (October 29, 2006), we did not consider claimant's written argument when reaching this decision. Even if we had considered claimant's written argument, the outcome of this decision would remain the same.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

¹ Hearing Decision 13-UI-03887.

DECISION: Hearing Decision 14-UI-12027 is affirmed.

Susan Rossiter and Tony Corcoran;
D. E. Larson, not participating.

DATE of Service: April 15, 2014

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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.