

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0543

*Affirmed*  
*Overpayment Assessed*  
*Late Request for a Hearing Dismissed*

**PROCEDURAL HISTORY:** On May 10, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from February 20, 2011 through February 26, 2011 (decision # 94025). On May 31, 2013, decision # 94025 became final without a request for a hearing being filed. On January 21, 2014, the Department served notice of an administrative decision (decision # 134035) assessing a \$473 overpayment based on decision #90425. On January 27, 2014, claimant requested a hearing on decisions # 94025 and #134035.

On February 10, 2014, ALJ Kangas issued Hearing Decision 14-UI-10060, dismissing claimant's request for a hearing on decision #94025 as untimely, subject to claimant's "right to renew" the request by submitting a response to the "Appellant's Questionnaire" attached to the hearing decision within 14 days of the date the decision was mailed.<sup>1</sup> On February 27, 2014, claimant filed an application for review of Hearing Decision 14-UI-10060 with the Employment Appeals Board (EAB). On March 3, 2014, claimant filed her response to the "Appellant's Questionnaire" attached to Hearing Decision 14-UI-10060 with EAB.

On March 12, 2014, ALJ Frank conducted a hearing on decision 134035, and on March 14, 2014, issued Hearing Decision 14-UI-12437, affirming decision #134035. On April 3, 2014, claimant filed an application for review of hearing Decision 14-UI-12437 with the EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 14-UI-10060 and 14-UI-12437. For case tracking purposes, this decision is being issued in duplicate (2014-EAB00544 and 2014-EAB-0543).

<sup>1</sup> Hearing Decision 14-UI-10060.

We construe the response to the “Appellant’s Questionnaire” attached to Hearing Decision 14-UI-10060 that claimant filed with EAB as a request to have EAB consider new information. OAR 471-041-0090(2)(b) allows EAB to consider new information if the party submitting the information shows that circumstances beyond the party’s control prevented it from offering the information at the hearing. In her response to the “Appellant’s Questionnaire,” claimant asserted that she was available for work during the week at issue, and explained that she failed to timely request a hearing on decision #94025 because she “made a mistake” and “read the decision wrong.” Because a careful reading of the decision was a circumstance well within claimant’s control, claimant has failed to demonstrate circumstances that would justify her failure to offer information about her availability for work at a hearing. Accordingly, claimant’s request to present new information is denied.

Claimant included a written argument in her application for review of Hearing Decision 14-UI-12437. Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

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

**DECISION:** Hearing Decisions 14-UI-10060 and 14-UI-12437 are affirmed.

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

**DATE of Service:** April 16, 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.