

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0587

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On January 31, 2012, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct. On February 20, 2012, the discharge decision became final without a request for hearing having been filed. On February 1, 2012, the Department served notice of an administrative decision assessing a \$4, 852 overpayment in regular insurance benefits (UI), \$727.80 in monetary penalties, and 44 penalty weeks based on the January 31, 2012 discharge decision. On February 21, 2012, the overpayment decision became final without a request for hearing having been filed. On March 5, 2014, claimant filed a late request for hearing. ALJ Kangas reviewed claimant's late request for hearing and on March 20, 2014, issued Hearing Decision 14-UI-12934, dismissing claimant's request for hearing. On April 8, 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. Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at a hearing. Claimant asserts he was incarcerated from February 1 through April 22, 2012, and also states that he did not have a valid address. Claimant contends that for these reasons, he never received the administrative decision at issue and was unable to "respond to a case I didn't have." Claimant failed to provide any explanation of the circumstances that resulted in his incarceration; as a result, we are unable to determine if claimant's incarceration was a circumstance beyond his reasonable control. In addition, it was well within claimant's reasonable control to maintain a valid address. Claimant has not shown that circumstances beyond his reasonable control prevented him from requesting a hearing at which he could present the information he now asks us to consider. Accordingly, his request to have us consider new information is denied.

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

DECISION: Hearing Decision 14-UI-12934 is affirmed.

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

DATE of Service: April 18, 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.