

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0643

Reversed and Remanded

PROCEDURAL HISTORY: On August 11, 2009, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from April 13, 2008 to September 27, 2008 (decision # 124458). On August 12, 2009, the Department served notice of an administrative decision assessing a \$9,360 overpayment, \$1,404 in monetary penalties and 52 penalty weeks based on decision # 124458. On September 1, 2009, decision # 124458 and the overpayment decision became final without a request for hearing having been filed. On February 28, 2014, claimant filed a late request for hearing on decision #124458. On March 5, 2014, ALJ Kangas issued Hearing Decision 14-UI-11668, dismissing claimant’s request for a hearing on the administrative decision concerning the overpayment 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 March 17, 2014, the Office of Administrative Hearings (OAH) received claimant’s response. ALJ Kangas reviewed claimant’s response and on April 10, 2014, issued Hearing Decision 14-UI-14863, again dismissing claimant’s late request for hearing on the administrative decision concerning the overpayment. On April 17, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Under ORS 657.270, the ALJ must give all parties a reasonable opportunity for a fair hearing. This obligation requires that the ALJ develop a record that shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. Here, the ALJ failed to comply with this statutory requirement. Claimant filed a late request for hearing on an administrative decision that concluded claimant was not available for work (decision #124458). The ALJ did not consider this administrative decision. Instead, the ALJ erroneously considered and denied claimant’s request for a hearing on another administrative decision – one that concluded that claimant was overpaid unemployment benefits. The ALJ thus failed to fully and fairly inquire into the facts needed to consider the issues properly presented to the ALJ. Accordingly, Hearing Decision 14-UI-14863 is reversed, and

¹ Hearing Decision 14-UI-11668.

this matter is remanded for development of a record concerning the issues presented by claimant's request for hearing on administrative decision #124458.

DECISION: Hearing Decision 14-UI-14863 is set aside, and this matter remanded for further proceeding consistent with this order.

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

DATE of Service: May 1, 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.