

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0786

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On October 17, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from December 2, 2012 through August 31, 2013. (decision # 161323). Also on October 17, 2013, the Department served notice of an administrative decision (decision #194754) assessing a \$4,300 overpayment, a \$659.85 monetary penalty, and 34 penalty weeks based on administrative decision #161323. On November 6, 2013, decisions #194754 and #161323 became final without a request for hearing having been filed. On March 19, 2014, claimant filed an untimely request for hearing on decisions #194754 and #161323.¹ On April 3, 2014, the Office of Administrative hearings mailed notice of a hearing scheduled for April 17, 2014 on claimant's request for a hearing on decision #194754, the overpayment decision. On April 17, 2014, ALJ Vincent conducted a hearing on claimant's request for hearing on decision # 194754, and on April 18, 2014, issued Hearing Decision 14-UI-15567, dismissing claimant's request for hearing as untimely.² On May 7, 2014, claimant filed an application for review of Hearing Decision 14-UI-194754 with the Employment Appeals Board (EAB).

In his argument, claimant asked for a "re-hearing of all the issues in this case because I am due a hearing at which I am afforded the opportunity to introduce sufficient evidence to outweigh the

¹ On March 28, 2014, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for April 11, 2014 on decision #161323, the decision concerning claimant's availability for work. On April 11, 2013, claimant failed to appear for the hearing, and on April 15, 2014, OAH issued Hearing Decision 2014-UI-14199, dismissing claimant's hearing request for failure to appear. Claimant has not filed an application for review of Hearing Decision 2014-UI-114199 with the EAB. .

² In the second paragraph of the "Opinion" section of the hearing decision, the ALJ refers to claimant's November 5, 2013 late request for a hearing. This reference appears to be a typographical error; the record clearly establishes that claimant's late hearing request was filed on March 19, 2014.

presumption in favor of the Employment Department.” The presumption to which claimant apparently referred is that documents sent through the US Postal Service are presumed to have been received by the addressee, subject to evidence to the contrary. OAR 137-003-0520 (January 31, 2012). Claimant contends that he did not receive a fair hearing because he was “limited to [presenting] oral testimony” at the hearing. Claimant’s request is construed as a request to have EAB consider new evidence under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing.

Claimant’s assertion – that he was limited to presenting “oral testimony” at his hearing is incorrect. The “Notice of Rights” attached to the hearing notice claimant received explained that the official case record would consist of the recording of the hearing and documents received at the hearing, and also explained the procedure for submitting documents the claimant might want to use at the hearing. A careful reading of the attachments included with the hearing notice was a circumstance well within claimant’s reasonable control. Accordingly, claimant failed to demonstrate that circumstances beyond his reasonable control prevented him from presenting all the evidence he wanted to offer at the hearing. The request to present new information is, therefore, denied.

In addition, claimant failed to certify that he provided a copy of his argument to the other party 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 decision under review is **adopted**.

DECISION: Hearing Decision 14-UI-15567 is affirmed.

Susan Rossiter and Tony Corcoran;
D. E. Larson and J. S. Cromwell, *pro tempore*, not participating.

DATE of Service: May 20, 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/Appellate CourtForms.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.