

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0958

*Application for Review of Hearing Decision 14-UI-15152 Dismissed
Overpayment*

PROCEDURAL HISTORY: On September 25, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from August 18, 2013 to September 7, 2013 (weeks 34-13 to 36-13) (decision # 143010). On October 15, 2013, decision # 143010 became final without a request for hearing having been filed. On February 5, 2014, the Department served notice of an administrative decision (decision # 145115) assessing a \$1,044 overpayment based on decision # 143010. On February 25, 2014, decision # 145115 became final without a request for hearing having been filed. On February 26, 2014, claimant filed an untimely request for hearing. On March 12, 2014, ALJ Kangas issued Hearing Decision 14-UI-12118, dismissing claimant's request for hearing with respect to decision # 145115 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 13, 2014, ALJ Kangas issued Hearing Decision 14-UI-12398, dismissing claimant's request for hearing with respect to decision # 143010 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.²

On March 18, 2014, the Office of Administrative Hearings (OAH) received claimant's response. On April 15, 2014, OAH issued a letter entitled "Cancellation of Hearing Decision" regarding Hearing Decision 14-UI-12118. That same day, ALJ Kangas reviewed claimant's response regarding Hearing Decision 14-UI-12398, and issued Hearing Decision 14-UI-15152, re-dismissing claimant's late request for hearing. On April 24, 2014, OAH issued notice of a hearing regarding Hearing Decision 14-UI-12118 scheduled for May 8, 2014 at 10:45 a.m. On May 5, 2014, Hearing Decision 14-UI-15152 became final without an application for review having been filed.

¹ Hearing Decision 14-UI-12118.

² Hearing Decision 14-UI-12398.

On May 8, 2014, ALJ Murdock conducted a hearing regarding Hearing Decision 14-UI-12118, at which claimant appeared and testified, and on May 16, 2014, issued Hearing Decision 14-UI-17807, allowing claimant's late request for hearing but affirming decision # 145115. On June 3, 2014, claimant filed by facsimile applications for review with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 14-UI-17807 and 14-UI-15152. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2014-EAB-1005 and 2014-EAB-0958).

CONCLUSIONS AND REASONS: Claimant did not establish good cause to file an untimely application for review of Hearing Decision 14-UI-15152, and his application for review should be dismissed.

ORS 657.270(4) required claimant's application for review of Hearing Decision 14-UI-15152 to be filed no later than May 5, 2014; it was filed on June 3, 2014, as shown by the receipt date stamped on the document. OAR 471-040-0065(1)(c) (October 29, 2006) (the filing date of applications for review filed by fax is the receipt date stamped or written on the fax transmission by the public employee who received the document). OAR 471-041-0070(3) requires that individuals filing late applications for review include with the late application "a written statement describing the circumstances that prevented a timely filing." Claimant provided an explanation contesting the outcome of the Department's decisions but failed to explain why he filed a late application for review of Hearing Decision 14-UI-15152 a month after the filing deadline expired.

Because the application for review of Hearing Decision 14-UI-15152 was filed after the 20-day deadline provided by ORS 657.270(4), and good cause to extend the time allowed has not been shown, the application for review must be dismissed.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the Hearing Decision 14-UI-17807 under review is **adopted**.

DECISION: Hearing Decision 14-UI-15152 is dismissed. Hearing Decision 14-UI-17807 is affirmed.

Susan Rossiter and Tony Corcoran;
J. S. Cromwell, not participating.

DATE of Service: June 11, 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.