

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1092

Affirmed
Late Request for Hearing Dismissed
Overpayment Assessed

PROCEDURAL HISTORY: On February 23, 2006, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 83808). On March 15, 2006, decision #83808 became final without a request for hearing having been filed. On April 27, 2006, the Department served notice of an administrative decision assessing a \$5,674 overpayment and 26 penalty weeks based on decision #83808. On May 17, 2006, the overpayment decision became final without a request for hearing having been filed. On April 16, 2014, claimant filed an untimely request for hearing on both decisions. On April 24, 2014, ALJ Kangas issued Hearing Decision 14-UI-16029, dismissing claimant's request for a hearing on the overpayment decision as untimely, and on April 25, 2014, ALJ Kangas issued Hearing Decision 14-UI-16049, dismissing claimant's request for a hearing on decision #83808 as untimely, subject to claimant's "right to renew" the requests by submitting a response to the "Appellant Questionnaire" attached to each hearing decision within 14 days of the date on which each decision was mailed.¹ On May 8, 2014, the deadline for filing a response to Hearing Decision 14-UI-16029 expired, and on May 9, 2014, the deadline for filing a response to Hearing Decision 14-UI-16049 expired. On May 13, 2014, the Office of Administrative Hearing (OAH) received claimant's responses.

On June 9, 2014, ALJ Kangas issued a letter order in regard to Hearing Decision 14-UI-16029 and on June 18, 2014, issued a letter order in regard to Hearing Decision 14-UI-16049. Both letter orders stated that claimant's responses were late and would not be considered. On June 25, 2014, claimant filed applications for review with the Employment Appeals Board (EAB).

¹ Hearing Decisions 14-UI-16039 and 14-UI-16049.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 14-UI-16029 and 14-UI-16049. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2014-UI-1092 and 2014-UI- 1093).

With his applications for review, claimant states that “[a]t this time of my failure to appear or respond I was in rehab for alcoholism.” Claimant’s request is construed as a request to have EAB consider additional 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 fails to provide any details concerning his participation in rehabilitation, e.g., when he entered rehabilitation, how long he was in rehabilitation, and how his participation prevented him from timely responding to the “Appellant Questionnaires” attached to Hearing Decisions 14-UI-16039 and 14-UI-16049. Without supporting details, we cannot conclude that circumstances beyond claimant’s reasonable control prevented him from providing the information he asks EAB to consider to the ALJ. Accordingly, claimant’s request to have EAB consider new information is denied.

DECISION: Hearing Decisions 14-UI-16029 and 14-UI-16049 are affirmed.

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

DATE of Service: July 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 court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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