

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1145

Affirmed
Overpayment

PROCEDURAL HISTORY: On December 17, 2009, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good caused. Claimant filed a timely request for hearing. On March 15, 2010, ALJ M. Smith conducted a hearing, and on March 17, 2010, issued Hearing Decision 10-UIB-05726, affirming the Department's decision. On April 6, 2010, Hearing Decision 10-UIB-05726 became final without an application for review having been filed.

On January 21, 2014, the Department served two notices of two administrative decisions; one assessing a \$924 overpayment (decision # 70952) based on Hearing Decision 10-UIB-05726, and one assessing a \$75 overpayment (decision # 71248) in Federal Additional Compensation Benefits (FAC) based on Hearing Decision 10-UIB-05726. On February 10, 2014, decisions # 70952 and # 71248 became final without a request for hearing having been filed. On April 15, 2014, claimant filed an untimely request for hearing. On April 24, 2014, ALJ Kangas issued Hearing Decisions 14-UI-15886 and 14-UI-15887, dismissing claimant's request for hearing as untimely, subject to claimant's "right to renew" the request by submitting a response to the "Appellant Questionnaire" attached to the hearing decisions within 14 days of the date the decisions were mailed.¹ On April 29, 2014, the Office of Administrative Hearings (OAH) received claimant's response. On May 13, 2014, OAH issued two letters entitled, "Cancellation of Hearing Decision." On May 20, 2014, OAH issued notice of a consolidated hearing scheduled for June 3, 2014 at 2:30 p.m.

On June 3, 2014, ALJ Triana conducted a consolidated hearing in which claimant appeared and testified, and on June 9, 2014, issued Hearing Decisions 14-UI-19239 and 14-UI-19240, allowing claimant's late request for hearing, but affirming decisions # 70952 and # 71248. On June 30, 2014, claimant filed applications for review with the Employment Appeals Board (EAB).

¹ Hearing Decisions 14-UI-15886 and 14-UI-15887.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 14-UI-19239 and 14-UI-19240. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2014-EAB-1144 and 2014-EAB-1145).

Claimant's argument contained information that was not part of the hearing record. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision. Even if we had considered claimant's written argument, the outcome of these decisions would remain the same.

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

DECISION: Hearing Decision 14-UI-19239 and 14-UI-19240 are affirmed.

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

DATE of Service: July 14, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.