

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1409

*Applications for Review of Hearing Decisions 14-UI-21842 and 14-UI-21843 are Dismissed
Late Request for Hearing regarding Hearing Decision 14-UI-23833 Dismissed*

PROCEDURAL HISTORY: On May 7, 2010, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from November 8, 2009 to November 28, 2009 (weeks 45-09 to 47-09) (decision # 82456). On May 27, 2010, decision # 82456 became final without a request for hearing having been filed.

On January 23, 2014, the Department served two notices of two administrative decisions assessing a \$50 overpayment (decision # 75507) in Federal Additional Compensation Benefits (FAC) and a \$964 overpayment (decision # 75323) in Emergency Unemployment Insurance Benefits (EUC) based on decision # 82456. On February 12, 2014, decisions # 75507 and # 75323 became final without a request for hearing having been filed. On May 20, 2014, claimant filed an untimely request for hearing on decisions # 75507 and # 75323. On May 21, 2014, claimant filed an untimely request for hearing on decision # 82456. On May 29, 2014, ALJ Kangas issued Hearing Decision 14-UI-18656 for both decisions # 75507 and # 75323, 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 decision within 14 days of the date the decision was mailed.¹ On June 9, 2014, the Office of Administrative Hearings (OAH) received claimant's response. On June 26, 2014, OAH issued two letters entitled, "Cancellation of Hearing Decision." That same day, OAH issued two notices of a consolidated hearing scheduled for July 15, 2014 at 9:30 a.m.

On July 15, 2014, ALJ Wyatt conducted a consolidated hearing, and on July 18, 2014, issued Hearing Decisions 14-UI-21842 and 14-UI-21843, re-dismissing claimant's late request for hearing regarding decisions # 75507 and # 75323.

¹ ALJ Kangas issued only one hearing decision on May 29, 2014 for two late requests for hearing and applied claimant's response to the Appellant Questionnaire to both cases. Hearing Decisions 14-UI-18656.

On July 29, 2014, OAH issued notice of a hearing scheduled for August 13, 2014 at 8:15 a.m. regarding decision #82456. On August 13, 2014, ALJ Hoyer conducted a hearing and on August 21, 2014, issued Hearing Decision 14-UI-23833, dismissing claimant's request for hearing regarding decision #82456 as untimely.

On August 7, 2014, Hearing Decisions 14-UI-21842 and 14-UI-21843 became final without an application for review having been filed. On August 25, 2014, claimant filed applications for review of Hearing Decisions 14-UI-21842, 14-UI-21843 and 14-UI-23833 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 14-UI-21842, 14-UI-21843 and 14-UI-23833. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2014-EAB-1406, 2014-EAB-1408 and 2014-EAB-1409).

CONCLUSIONS AND REASONS: Claimant did not establish good cause to file untimely applications for review regarding Hearing Decisions 14-UI-21842 and 14-UI-21843, and claimant's application for review should be dismissed.

ORS 657.270(4) required claimant's applications for review regarding Hearing Decisions 14-UI-21842 and 14-UI-21843 to be filed no later than August 7, 2014; they were filed on August 25, 2014, as shown by the postmark date affixed to the envelope in which they were mailed. OAR 471-041-0065 (October 29, 2006). 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 did not provide any explanation as to why he filed his applications 18 days after the filing deadline expired.

Because claimant's applications for review regarding Hearing Decisions 14-UI-21842 and 14-UI-21843 were 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 applications for review must be dismissed.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), Hearing Decision 14-UI-23833 is **adopted**.

DECISION: Hearing Decisions 14-UI-21842 and 14-UI-21843 are dismissed. Hearing Decision 14-UI-23833 is affirmed.

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

DATE of Service: August 27, 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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