

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1493

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On July 16, 2010, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$804 overpayment, a \$120.60 monetary penalty, and 22 penalty weeks. This overpayment decision was based on an administrative decision issued on July 15, 2010 that found that claimant voluntarily left work on May 25, 2010, and on unreported work and earnings. On August 5, 2010, the overpayment decision became final without a request for hearing having been filed. On August 7, 2014, claimant filed a request for hearing. On August 15, 2014, ALJ Kangas issued hearing Decision 14-UI-23466, 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 September 4, 2014, claimant filed an application for review with the Employment Appeals Board (EAB). By letter dated September 10, 2014, the Office of Administrative Hearings (OAH) informed claimant that his response to the "Appellant Questionnaire" was late, and that Hearing Decision 14-UI-23466 remained in effect.

With his application for review, claimant included a copy of his responses to the "Appellant Questionnaire," in which he asserted that he failed to timely file a request for hearing on the 2010 overpayment decision at issue because he "never received the original notice and this is the first I have heard of this matter." Claimant asks for a hearing so that "I can straighten this matter out." Claimant's request is considered a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information

¹ Hearing Decision. 14-UI-23466.

shows that it was prevented by circumstances beyond its reasonable control from presenting the information at a hearing. Claimant provided no details, such as problems he experienced with his mail in 2010, that would support his claim that he failed to receive the administrative decision at issue and only became aware of the decision over four years after it was issued. Without such details, we have no evidence that would support a conclusion that the claimant's failure to receive the administrative decision was a circumstance beyond his reasonable control. In addition, claimant failed to explain why he did not exercise the "right to renew" his hearing request by following the instructions on the "Appellant Questionnaire" and timely returning the questionnaire to the OAH.² Accordingly, claimant has failed to demonstrate that circumstances beyond his reasonable control prevented him from timely requesting or timely renewing his request for a hearing at which he could present the information he wants EAB to consider. Claimant's request to present new information is, therefore, denied.

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-23466 is affirmed.

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

DATE of Service: September 22, 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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² Hearing Decision 14-UI-23466 states that if the claimant answers the questions on the "Appellant Questionnaire" included with the decision "**and mails or faxes that information to the Office of Administrative Hearings within 14 days from the date the attached order was mailed** (the mailing date is on the upper right corner of the first page of this order) **we will consider that additional information and issue another order deciding whether to grant your late request for hearing.** (Emphasis in the original). Hearing Decision 14-UI-23466 also states that claimant "may appeal this decision by filing the attached Application for Review with the Employment Appeals Board within 20 days of the date this decision is mailed." Claimant apparently confused the deadline for submitting the "Appellant Questionnaire" to OAH with the deadline for appealing Hearing Decision 14-UI-23466 to the EAB.