

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1513

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On July 11, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from June 8, 2014 through July 5, 2014 (weeks 24-14 through week 27-14) (decision # 162105). On July 31, 2014, decision # 162105 became final without a request for hearing having been filed. On August 14, 2014, claimant filed an untimely request for hearing.

On August 19, 2014, ALJ Kangas issued Hearing Decision 14-UI-23660, 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.<sup>1</sup> On August 22, 2014, the Office of Administrative Hearings (OAH) received claimant's response. On September 16, 2014, ALJ Kangas issued Amended Hearing Decision 14-UI-24941, dismissing claimant's request for hearing.<sup>2</sup> On September 19, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

With his application for review, claimant included an explanation of his attempt to request a hearing. He explained that he faxed a request for hearing on July 23, 2014, and asserted that "I believe something was wrong on your end, and stopped the fax. I sent you proof of this. Nothing more I could have done."<sup>3</sup> This information was not presented to OAH; in the "Appellant Questionnaire," claimant asserted that "I have enclosed fax machine activity report...I attempted to fax the request for hearing **not realizing it did not go through until I just got an activity report** from my fax machine. I heard the fax redialing and assumed it went through. **I should not have assumed and checked the fax**

<sup>1</sup> Hearing Decision 14-UI-24045

<sup>2</sup> On September 10, 2014, ALJ Kangas issued Hearing Decision 14-UI-24941, dismissing claimant's request for hearing. This hearing decision failed to acknowledge or consider the "Appellant Questionnaire" claimant submitted to OAH on August 22, 2014. In Amended Hearing Decision 14-UI-24941, the ALJ considered claimant's "Appellant Questionnaire, and concluded that it failed to demonstrate that claimant had good cause for filing a late hearing request.

<sup>3</sup>The record contains no evidence of any attempt by claimant to fax a hearing request on July 23, 2014.

**machine.**” (Emphasis added.) Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information if the party offering the information shows it was prevented by circumstances beyond its reasonable control from offering the information at the hearing. Claimant provided no reason why he did not explain in his “Appellant Questionnaire” that the OAH fax machine stopped, and prevented him from submitting his hearing request. Claimant failed to demonstrate that any circumstances beyond his reasonable control prevented him from submitting the information to OAH that he now wants EAB to consider. Claimant’s request to provide 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-24941 is affirmed.

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

**DATE of Service:** September 26, 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](http://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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