

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1544

Affirmed
Request to Reopen Denied
Overpayment and Penalties

PROCEDURAL HISTORY: On August 4, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$904.00 overpayment, a \$132.60 monetary penalty and 8 penalty weeks based on an August 21, 2012 administrative decision that found claimant was not actively seeking work for the period July 15, 2012 through August 11, 2012 (weeks 29-12 through 32-12) (Decision # 194849). Claimant filed a timely request for hearing. On August 26, 2014, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for September 10, 2014 at 9:30 a.m. Claimant did not appear at the hearing. On September 10, 2014, ALJ Wyatt issued Hearing Decision 14-UI-24903, dismissing claimant's request for hearing for failure to appear. Claimant filed a timely request to reopen the hearing. On September 23, 2014, ALJ Kangas reviewed claimant's request to reopen and issued Hearing Decision 14-UI-25670, denying claimant's request. On September 25, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing. Specifically, claimant included records for her ReliaCard account that appear to indicate that no payments were received in the account during the weeks at issue. 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 presenting the information at the hearing. The record shows that claimant failed to appear for her hearing because she believed the September 10 hearing was scheduled to begin at 10 a.m. It was well within claimant's reasonable control to avoid the type of human error that caused her to miss the hearing. Accordingly, claimant's request to present new evidence is denied.¹

¹ Claimant can contact the Department at [contact info] and present any evidence she has that she did not receive benefits during the period at issue. Under ORS 657.290, the Department has authority to reconsider a decision it has issued, and may issue a new decision to correct any errors in the previous decision.

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-25670 is affirmed.

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

DATE of Service: September 30, 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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