

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1839

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On October 1, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 133517). On October 21, 2014, decision # 133517 became final without a request for hearing having been filed. On October 23, 2014, claimant filed an untimely request for hearing. On November 5, 2014, ALJ Kangas issued Hearing Decision 14-UI-28242, 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 November 21, 2014, OAH received claimant's late response. By letter dated December 1, 2014, the Office of Administrative Hearings (OAH) informed claimant that her response to the "Appellant Questionnaire" was late, and that Hearing Decision 14-UI-28242 remained in effect. On December 3, 2014, claimant filed an application for review of the December 3rd letter with the Employment Appeals Board (EAB).

In her written argument, claimant argues that her November 21, 2014 response to the "Appellant Questionnaire" was not late:

"On the 1st page (of Hearing Decision 14-UI-28242) titled "**Certificate of Mailing**" it states that any appeal from this Order must be filed on or before November 25, 2014 to be timely. Because of mistakes like this, it clearly makes me question the abilities of your department to review my case & give me a fair judgment... Why am I being penalized because your documents are misleading have (sic) several contradicting information and dates of when appeal deadlines (sic). How can you make a decision based on any evidence when you can't provide with accurate and uniform information."

Claimant quotes correctly from the first page of the "Certificate of Mailing" attached to Hearing Decision 14-UI-28242. However, the first page of the decision itself states: "**If appellant answers the**

¹ Hearing Decision 14-UI-28242

questions on the last pages of this order 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 you late request for hearing.** (Emphasis in original.) Hearing Decision 14-UI-28242 was served on November 5, 2014 as indicated on page one of the “Certificate of Mailing”. Claimant’s response to the Appellant Questionnaire was due by no later than November 19, 2014. Claimant’s response was two days late.

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-28242 is affirmed. Claimant’s late request for hearing is dismissed.

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

DATE of Service: December 16, 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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