

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1923

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work (decision # 105400). On September 29, 2014, decision # 105400 became final without a request for hearing having been filed. On October 21, 2014, claimant filed an untimely request for hearing. On November 12, 2014, ALJ Kangas issued Hearing Decision 14-UI-28554, 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 15, 2014, OAH received claimant's response. On November 24, 2014, ALJ Kangas issued Hearing Decision 14-UI-29225, cancelling Hearing Decision 14-UI-28554 and re-dismissing claimant's October 21, 2014 request for hearing. On December 15, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant and based on the hearing record. Claimant argued that he "misinterpreted the instructions" while claiming benefits, and that he should be reimbursed for the overpayment he returned to the Department. However, before the issue of claimant's overpayment or repayment can be addressed, claimant must first establish that he had good cause for failing to file a timely request for hearing on the overpayment decision. Claimant admitted that he received the administrative decision and chose not to request a hearing, and explained that he let the deadline pass because he "thought everything was okay," and "didn't think there was a problem until payments were withheld." DR Exhibit 3. In other words, claimant did not file a timely request for hearing in this matter because he did not understand the consequences of the administrative decision. OAR 471-040-0010(1)(b)(B) specifically provides that individuals who delay filing a request for hearing past the filing deadline because they failed to understand the implications of a decision when it was received are not entitled to have the filing deadline extended. We agree with the ALJ that it was within claimant's reasonable control to carefully read the decision and follow its instructions, and his late request for hearing is not granted.

¹ Hearing Decision 14-UI-28554.

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-29225 is affirmed.

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

DATE of Service: **December 23, 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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