

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0022

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On March 17, 2011, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was ineligible for Emergency Unemployment Insurance (EUC) benefits from July 11, through August 14, 2011 (weeks 28-10 through 32-10). On March 31, 2011, that decision became final without an appeal being filed. On September 3, 2014, the Department issued a decision (decision # 121706) concluding that claimant was overpaid \$1,810 in EUC benefits as a result of the March 17, 2011 decision. On September 23, 2014, decision # 121706 became final without an appeal having been filed. On November 14, 2014, claimant filed a late request for hearing. On November 26, 2014, ALJ Kangas issued Hearing Decision, 14-UI-29382, dismissing claimant's hearing request as a untimely, subject to claimant's "right to renew" her request by submitting an "Appellant Questionnaire" within 14 days of the date on which the decision was mailed.¹ On December 15, 2014, the Office of Administrative Hearings (OAH) received claimant's late response to the "Appellant Questionnaire." Also on December 15, 2014, claimant filed an application for review of Hearing Decision 14-UI-29382 with the Employment Appeals Board (EAB). By letter dated December 29, 2014, OAH informed claimant that her response to the "Appellant Questionnaire" would not be considered because it was late and that Hearing Decision 14-UI-29382 remained in effect.

With her application for review, claimant provided an explanation why she did not timely respond to the "Appellant Questionnaire." Claimant's explanation 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 it shows that circumstances beyond its reasonable control prevented it from presenting it to the ALJ at a hearing, or in this case, from presenting it to the ALJ by timely submitting the "Appellant Questionnaire."

In the explanation provided with her application for review, claimant stated that she was temporarily working in Bremerton, Washington during the month of December 2014. On December 10, 2014, she

¹ Hearing Decision 14-UI-29382.

returned to Bend, where she was then living, and on December 11, picked up her mail. During the weekend of December 13 and 14, claimant moved to Hines, Oregon, and on December 15, submitted her “Appellant Questionnaire” by faxing it from a Department office in Hines. Claimant asserted that she believed her response was timely because the certificate of mailing on Hearing Decision 14-UI-29382 states that “[a]ny appeal from this Order must be filed on or before December 16, 2014 to be timely.” Claimant thus contended that her failure to timely submit her “Appellant Questionnaire” resulted from her failure to receive it until after the deadline for submission had passed,² and from her confusion regarding the deadline for filing it.

After filing her request for hearing on November 14, 2014, claimant knew she would be receiving correspondence from OAH. Claimant provided no explanation why she did not arrange for her mail to be promptly forwarded to her in Bremerton, where she was working, or why she was unable to arrange to have someone check her mail and tell her about any important correspondence. Without such details, we have no basis for concluding that claimant’s failure to timely receive the hearing decision was a circumstance beyond her reasonable control. In regard to confusion about the instructions she received in Hearing Decision 14-UI-29382, we note that the decision advised claimant she could file an application for review of the decision to EAB within 20 days of the date on which the decision was mailed, and also advised claimant that she must submit her “Appellant Questionnaire” within 14 days of the date on which the decision was mailed. It was well within claimant’s reasonable control to carefully read the decision and seek help from an OAH representative if she did not understand it. Claimant therefore did not demonstrate that circumstances beyond her reasonable control prevented her from presenting the information she now asks us to consider to the ALJ in a timely response to the “Appellant Questionnaire.” Her request to present new information is denied.

EAB reviewed the entire record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 14-UI-29382 is affirmed.

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

DATE of Service: January 20, 2015

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.

² To be timely, claimant’s response to the “Appellant Questionnaire” needed to have been filed on or before December 10, 2014.

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