

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0094

Affirmed
Late Requests for Hearing Dismissed
Overpayment Assessed

PROCEDURAL HISTORY: On September 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 122815) concluding claimant did not actively seek work from April 13 through July 5, 2014 (weeks 16-14 through 27-14). On September 22, 2014, decision # 122815 became final without a request for hearing having been filed. On October 3, 2014, the Department served notice of an administrative decision (decision # 82731) assessing a \$4,164 overpayment based on decision # 122815. On October 23, 2014, decision # 82731 became final without a request for hearing having been filed. On December 24, 2014, claimant filed untimely requests for hearing on both decisions.

On January 6, 2015, ALJ Kangas issued two Hearing Decisions, 15-UI-31353 and 15-UI-31367, dismissing claimant's requests for hearing as untimely, subject to claimant's "right to renew" the requests 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 January 22, 2014, the Office of Administrative Hearings (OAH) received claimant's response. Also on January 22, 2015, claimant filed applications for review with the Employment Appeals Board (EAB). On January 26, 2015, ALJ Kangas issued a letter informing claimant his responses to the Appellant Questionnaire were late, that OAH would not consider his responses, and that Hearing Decision 15-UI-31353, dismissing claimant's December 24, 2014 late request for hearing, would remain in effect.² On January 30, 2015, claimant filed additional applications for review with the EAB.

¹ Hearing Decisions 15-UI-31353 and 15-UI-31367 were mailed January 6, 2015. January 20, 2015 was the 14-day deadline for submitting a timely response. January 26, 2015 was the 20-day deadline for timely filing of an application for review with EAB. Thus claimant's January 22, 2015 response to the Appellant Questionnaire was two days late, but his January 22, 2015 application for review with EAB was timely.

² The ALJ did not issue a letter informing claimant that his response to Hearing Decision 15-UI-31367 (the decision that dismissed his late request for hearing on decision #122815) was late. However, EAB considered claimant's late requests for a hearing on both administrative decisions in reaching our conclusion, assuming claimant's written argument applied to both administrative decisions.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-31353 and 15-UI-31367. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-0094 and 2015-EAB-0095).

In his application for review, claimant explained why he did not timely respond to the “Appellant Questionnaires,” and also explained why he filed late requests for hearing on decisions # 122815 and # 82731. Claimant’s explanation is considered a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006) if the party offering it shows that circumstances beyond its reasonable control prevented the party from presenting it to the ALJ at a hearing, or in this case, from presenting it to the ALJ by timely submitting the “Appellant Questionnaires.”

Claimant explained that he believed his responses to Hearing Decisions 14-UI-3153 and 15-UI-31367 were timely because the certificate of mailing attached to each decision indicates that a reply was due on January 26, 2015. We note that each hearing decision advised claimant that he could file an application for review to EAB within 20 days of the date on which the decision was mailed, and also advised claimant that he must submit his “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 each decision to determine the appropriate date for returning his “Appellant Questionnaires,” and seek help from an OAH representative if he did not understand the instructions provided in the decision. Claimant therefore did not demonstrate that circumstances beyond his reasonable control prevented him from presenting the information he now asks EAB to consider to the ALJ in timely responses to the “Appellant Questionnaires.”

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

DECISION: Hearing Decisions 15-UI-31353 and 15-UI-31367 are affirmed.

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

DATE of Service: February 5, 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.

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