

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0172

Affirmed
Late Request for Hearing Denied
Ineligible

PROCEDURAL HISTORY: On September 18, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from June 15 through July 19, 2014 (weeks 25-14 through 29-14) and from August 17 through August 30, 2014 (weeks 34-14 and 35-14) (decision # 104255). On October 8, 2014, decision #104255 became final without an appeal being filed. On January 13, 2015, claimant filed an untimely request for a hearing. On January 27, 2015, ALJ Kangas issued Hearing Decision 15-UI-32369, 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 February 11, 2015, the Office of Administrative Hearings (OAH) received claimant's response. On February 12, 2015, ALJ Kangas issued a letter informing claimant her response to the Appellant Questionnaire was late, that OAH would not consider her response, and that Hearing Decision, dismissing claimant January 13, 2015 late request for hearing would remain in effect. On February 19, 2015, claimant filed an application for review with the EAB.

In her application for review, claimant explained why she did not timely respond to the "Appellant Questionnaires." 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 she believed her response to Hearing Decisions 14-UI- 32369 was timely because the certificate of mailing attached to the decision indicated that a reply was due on February 17, 2015. We note that the hearing decision advised claimant that she could file an application for review to EAB within 20 days of the date on which the decision was mailed (February 17, 2014), and also advised claimant that she must submit her "Appellant Questionnaire" within 14 days of the date on which the

¹ Hearing Decision 15-UI-32369.

decision was mailed (February 10, 2015). It was well within claimant's reasonable control to carefully read each decision to determine the appropriate date for returning her "Appellant Questionnaires," and seek help from an OAH representative if she did not understand the instructions provided in the decision. Claimant therefore did not demonstrate that circumstances beyond her reasonable control prevented her from presenting the information she 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 decision under review is **adopted**.

DECISION: Hearing Decision 15-UI-32369 is affirmed.

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

DATE of Service: February 24, 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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