

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0197

Affirmed
Late Request for Hearing Dismissed
Disqualification

PROCEDURAL HISTORY: On November 4, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not actively seeking work (decision # 152519). On November 24, 2014, decision # 152519 became final without an appeal being filed. On January 9, 2015, claimant filed a late request for hearing. On January 22, 2015, ALJ Kangas issued Hearing Decision 15-UI-32191, 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 February 11, 2015, the Office of Administrative Hearings (OAH) received claimant's late response to the "Appellant Questionnaire." Also on February 11, 2015, claimant filed an application for review of Hearing Decision 15-UI-32191 with the Employment Appeals Board (EAB). By letter dated February 18, 2015, OAH informed claimant that her response to the "Appellant Questionnaire" would not be considered because it was late and that Hearing Decision 15-UI-32191, dismissing claimant's late request for hearing, remained in effect.² On February 24, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

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

¹ Hearing Decision 15-UI-32191 was mailed January 22, 2015. The 14 day deadline to submit a response was February 5, 2015.

² Hearing Decision 15-UI-32191 and the February 18, 2015 letter informed claimant that her response to the "Appellant Questionnaire" was due within 14 days of the date on which the decision was mailed, thus making February 5, 2015 the deadline. Claimant's response was not received until February 10, 2015 by fax, five days late.

submitting the “Appellant Questionnaire.” Claimant asserted that she believed her response was timely because the certificate of mailing on Hearing Decision 15-UI-32191 states that “[a]ny appeal from this Order must be filed on or before February 11, 2015 to be timely.” Claimant thus contended that her failure to timely submit her “Appellant Questionnaire” resulted from her confusion regarding the deadline for filing it. In regard to confusion about the instructions she received in Hearing Decision 15-UI-32191, 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 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-32191 is affirmed, claimant’s January 9, 2015 late request for hearing is dismissed. The Department’s administrative decision # 152519 remains undisturbed.

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

DATE of Service: March 2, 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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