

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0197-R**

*EAB Decision 2015-EAB-0197 Adhered To On Reconsideration  
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 December 5, 2014, the Department served notice of an administrative decision (#113021) assessing a \$1,952 overpayment based on decision #152519.<sup>1</sup> On January 9, 2015, claimant filed a late request for hearing on decision #152519. On January 22, 2015, ALJ Kangas issued Hearing Decision 15-UI-32191, dismissing claimant’s hearing request on decision #152519 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.<sup>2</sup>

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

---

<sup>1</sup> With her April 4, 2015 request for reconsideration, claimant included a “Written Argument,” presented on an EAB form appropriate to use in submitting a written argument in support of an application for review of a hearing decision, dated December 24, 2014. In this argument, claimant indicated her disagreement with decision # 113021. EAB has no record of ever receiving that document until April 2015. EAB sent the document received in April 2015 to the Office of Administrative Hearings for consideration as a late request for hearing on decision #113021.

<sup>2</sup> Hearing Decision 15-UI-32191 was mailed January 22, 2015. The 14 day deadline to submit a response was February 5, 2015.

request for hearing, remained in effect.<sup>3</sup> On February 24, 2015, claimant filed an application for review with the Employment Appeals Board (EAB). On March 3, 2015, EAB issued Appeals Board Decision 2015-EAB-0197, affirming Hearing Decision 15-UI-32191. On April 4, 2015, claimant filed an untimely request for reconsideration.<sup>4</sup> In accordance with the authority granted to us under ORS 657.290(3), however, we exercise our authority to grant reconsideration of Appeals Board Decision 2015-EAB-0197 to address some issues raised by the reconsideration request.

In her request for reconsideration, claimant asserted that she was unable to promptly return the “Appellant Questionnaire” because she was out of the country from January 16 through 24, 2015 and again from January 29 through February 8, 2015. This information regarding claimant’s travel outside of the United States is new; she did not present it to the ALJ in her response to the “Appellant Questionnaire.” Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information to an ALJ at hearing or in response to the ALJ’s request. Claimant gave no reason in why she did not tell the ALJ about her travel. In addition, we note that at the time claimant traveled outside of the United States, she had submitted a request for a hearing and knew, or should have known, that action would be taken on her request. It was well within claimant’s reasonable control to monitor her mail while she was gone, and, if unable to personally do so, to arrange for a friend or relative monitor mail that was received during claimant’s absences.

Claimant contended that EAB erred in affirming Hearing Decision 15-UI-32191, which dismissed her late request for hearing because she did not timely submit her “Appellant Questionnaire” to the ALJ. Claimant asserted that Hearing Decision “stated several times throughout the document that I had until 2/11/15 or 20 days from the date they mailed it, to file an appeal –**OR**- to request a hearing.” Request for Reconsideration, p. 2. (Emphasis in original). According to claimant, her “Appellant Questionnaire” was timely submitted because it was received by the Office of Administrative Hearings within 20 days of the date on which Hearing Decision 15-UI-32191 was mailed.

Contrary to claimant’s assertion, we find no error of fact or law in Appeals Board Decision 2015-EAB-0197. As we explained in that decision, claimant’s justification for failing to timely submit her “Appellant Questionnaire” was considered a request to present new information to EAB under OAR 471-041-0090, and denied. As we explained, EAB may consider new information only if circumstances beyond a party’s reasonable control prevented the party from presenting the information to the ALJ. It was well within claimant’s reasonable control to read Hearing Decision 15-UI-32191 and understand that she was faced with two deadlines: a 14 day deadline to submit her “Appellant Questionnaire” to OAH and a 20 day deadline to submit an application for review to EAB to ask for review of the hearing decision dismissing her late hearing request.

For the above stated reasons, we therefore adhere to the conclusion we reached in our original decision.

---

<sup>3</sup> 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 after that date passed, on February 11, 2015.

<sup>4</sup> Under OAR 471-041-0145(2)(b), a request for reconsideration must be filed within 20 days of the date on which the decision for which reconsideration is sought was mailed.

**DECISION:** Reconsideration is granted. We adhere to Appeals Board Decision 2015-EAB-0197.

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

**DATE of Service:** April 6, 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 Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.