

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0282

Affirmed
Late Request for Hearing Dismissed
Overpayment Assessed

PROCEDURAL HISTORY: On March 7, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 80301) concluding that claimant did not actively seek work for the period February 9 through February 22, 2014 (weeks 7-14 and 8-14). Claimant filed a timely request for hearing. On March 20, 2014, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for April 7, 2014. Claimant failed to appear at the April 7 hearing, and on April 9, 2014, ALJ Hoyer issued Hearing Decision 14-UI-14737, dismissing claimant's request for hearing. On April 29, 2014, Hearing Decision 14-UI-14737 became final without a motion reopen or an application for review having been filed.

On May 13, 2014, the Department served notice of an administrative decision (decision # 105918) assessing a \$1,076 overpayment based on the decision # 80301. On June 2, 2014, decision # 105918 became final without a request for hearing having been filed.

On December 30, 2014, claimant filed an untimely motion to reopen the hearing on decision # 80301. On January 5, 2015, ALJ Kangas issued Hearing Decision 15-UI-31277, dismissing claimant's motion to reopen as untimely and concluding that Hearing Decision 14-UI-14737 remained undisturbed. On January 26, 2015, Hearing Decision 15-UI-14737 became final without an application for review having been filed.

On January 29, 2015, claimant filed an untimely request for hearing on decision # 105918. On February 6, 2015, ALJ Kangas issued Hearing Decision 15-UI-33098, dismissing claimant's request for a hearing decision # 105918 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 on which the decision was mailed.¹ On February 20, 2015, the deadline for filing a response to Hearing Decision 15-UI-33098 expired. On February 26, 2015, the Office of Administrative Hearing (OAH)

¹ Hearing Decision 15-UI-33098 was issued on February 6, 2015. Therefore, the 14-day deadline for claimant's response was February 20, 2015, not February 26, 2015.

received claimant's late response. On March 9, 2015, ALJ Kangas issued a letter order in regard to Hearing Decision 15-UI-33098 stating that claimant's response was late and would not be considered. On March 13, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

In his written argument, claimant stated: "I apologize for not understanding all the regulations and standards that the state of Oregon has in place but I was not informed of this new information until February 26, 2015."

Claimant's statement is construed as a request to have EAB consider additional evidence under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at hearing, or, as in this case, in a timely response to the Appellant Questionnaire. It is unclear from the explanation claimant provided what prevented him from timely submitting his appellant questionnaire. To the extent that claimant's response was late because claimant confused the 20-day deadline for filing an application for review of Hearing Decision 15-UI-33098 with the 14-day deadline for responding to the Appellant Questionnaire, claimant had it within his reasonable control to carefully read the decision and the instructions that accompanied it. Accordingly, claimant's request to have EAB consider 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-33098 is affirmed.

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

DATE of Service: March 19, 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. 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.

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