

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0324

Affirmed
Late Request for Hearing Dismissed
Disqualification

PROCEDURAL HISTORY: On January 9, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 101643). On January 29, 2015 decision # 101643 became final without a request for hearing having been filed. On February 18, 2015, claimant filed a late request for hearing. On February 26, 2015, ALJ Kangas issued Hearing Decision 15-UI-34217, dismissing claimant's request for hearing subject to claimant's "right to renew" the request by replying to an "Appellant Questionnaire" within 14 days.¹ On March 4, 2015, the Office of Administrative Hearings (OAH) received claimant's response. On March 10, 2015, ALJ Kangas reviewed claimant's response, and issued Hearing Decision 15-UI-34826, re-dismissing claimant's request for hearing. On March 21, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant and based on the hearing record. Claimant argues the Department should be estopped from denying benefits. The doctrine of equitable estoppel will be applied against the Department if it is shown that the person asserting it was misled by the Department and justifiably and detrimentally relied on the misleading conduct. See *Western Graphics Corp.*, 76 Or App 608, 710 P2d 788 (1985); *Employment Department v. Furseth*, 140 Or App 464, 915 P2d 1043 (1996). Here, claimant provided no evidence that the Department made any material misstatement of fact that claimant relied on in filing a late request for hearing. In his March 4, 2015 response to the "Appellant Questionnaire" claimant asserts his request for hearing was late because "I was unaware of my right to appeal. I played 'phone tag' with caseworker because I had no phone." Claimant provided no additional information regarding his communication with his "caseworker". Given his assertion there was no communication, it is difficult to understand how the "caseworker" made any material misstatement of fact upon which claimant relied when filing a late request for hearing. Claimant had it within his reasonable control to contact the Department regarding his

¹ Hearing Decision 15-UI-34217.

communication difficulty. OAR 471-040-0040(2)(b)(B) provides that “good cause” does not include not understanding the implications of a decision or notice when it is received.

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-34826 is affirmed.

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

DATE of Service: March 30, 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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