

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0374**

*Affirmed*  
*Late Request for Hearing Dismissed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 31, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not actively seeking work (decision # 133559). On January 20, 2015, decision # 133559 became final without an appeal being filed. On February 17, 2015, claimant filed a late request for hearing. On February 26, 2015, ALJ Kangas issued Hearing Decision 15-UI-34182, dismissing claimant's hearing request on decision #133559 as a untimely, subject to claimant's "right to renew" his request by submitting an "Appellant Questionnaire" within 14 days of the date on which the decision was mailed.<sup>1</sup>

On March 18, 2015, the Office of Administrative Hearings (OAH) received claimant's late response to the "Appellant Questionnaire." By letter dated March 23 2015, OAH informed claimant that his response to the "Appellant Questionnaire" would not be considered because it was late, and that Hearing Decision 15-UI-34182, dismissing claimant's late request for hearing, remained in effect.<sup>2</sup> On April 6, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

In his written argument, claimant contended that the ALJ erred in refusing to consider his response to the questionnaire, arguing that his response was not late because he filed the response on March 18th, and "The first page [of the hearing decision] clearly states that on or before March 18, 2015 would be timely." We agree with claimant that the certificate of mailing attached to Hearing Decision 15-UI-34182 stated that he had 20 days, until March 18, 2015, to *appeal* Hearing Decision 15-UI-34182. However, for claimant's request for hearing to be renewed, and for the contents of claimant's

<sup>1</sup> Hearing Decision 15-UI-34182 was mailed February 26, 2015. The 14-day deadline to submit a response was March 12, 2015.

<sup>2</sup> Hearing Decision 15-UI-34182 and the March 23, 2015 letter informed claimant that his response to the "Appellant Questionnaire" was due within 14 days of the date on which the decision was mailed, thus making March 12, 2015 the deadline for returning a completed questionnaire to OAH. Claimant's response was not received until after that date passed, on March 18, 2015.

questionnaire response to be considered, claimant had only 14 days to return the appellant questionnaire to OAH.<sup>3</sup>

Parties who receive "Dismissal With Right To Renew Appeal" decisions can find it confusing to distinguish between submitting a questionnaire response and appealing to EAB, or distinguish between the appeal deadline and the deadline to return an appellant questionnaire to OAH. However, it is notable that the hearing decision in this case stated in five separate locations, often in bold font, that there was a 14-day deadline for submitting the questionnaire response claimant filed on March 18th. Hearing Decision 15-UI-34182 stated on page 1 (emphasis in original),

**If appellant answers the questions on the last pages of this order and mails or faxes that information to the Office of Administrative hearings [sic] within 14 days from the date the attached order was mailed . . . we will consider that additional information and issue another order deciding whether to grant your late request for hearing.**

On page 2, the decision stated,

The request for hearing . . . is dismissed, subject to appellant's right to provide the additional requested information within fourteen (14) days for the Office of Administrative Hearings to consider in determining whether to grant the late request for hearing.

Page 4 of the decision stated (emphasis in original),

**Important: Answers must be mailed or faxed to the Office of Administrative Hearings within 14 days from the date the attached order was mailed. \* \* \* We are dismissing your hearing request (appeal) because you did not provide enough information to show that you had**

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<sup>3</sup> EAB's purpose is to review hearing records by OAH's ALJs, and, as such, EAB cannot open a case or review a hearing record at the same time an ALJ is doing the same. When an appellant questionnaire is received from a party, the party is entitled to a determination by an ALJ as to whether the questionnaire was timely, and whether it should be admitted as evidence in the case's hearing record. Therefore, when EAB receives a questionnaire response from a party, instead of construing it as an application for review (which, for the reasons that follow, can typically only result in a pro forma affirmance of the ALJ's decision), EAB customarily construes it as a response to the appellant questionnaire, and forwards it to OAH for review, as occurred in this case. It is important to note, however, that, had EAB construed claimant's returned questionnaire as a timely application for review instead of forwarding it to OAH, the outcome of this matter would remain the same for the reasons explained below, that is, EAB would affirm the ALJ's dismissal of his late request for hearing.

As noted, EAB's function is to review the hearing record that the Administrative Law Judge at OAH had before her when reaching the decision under review. The hearing record on review of Hearing Decision 15-UI-34182 did not include any information about the reason claimant filed a late request for hearing in this matter. EAB would therefore have to consider the questionnaire response claimant provided with his application for review as "new information" under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information only if he shows that circumstances beyond his reasonable control prevented him from submitting the new information into the hearing record. Because claimant had the opportunity to submit the information into the record by returning a completed questionnaire response to OAH within the 14-day period designated by the ALJ and did not, and because his application for review did not include any information showing he was prevented from doing so by factors or circumstances beyond his control, EAB would not consider the new information. Therefore, on review of the hearing record of Hearing Decision 15-UI-34182, which contained no evidence showing whether claimant had good cause for the late filing, the only conclusion EAB could reach would be to agree with the ALJ that claimant filed a late request for hearing of decision # 133559 and did not establish good cause to extend the filing deadline.

good cause for filing your hearing request late. \* \* \* **If you would like us to reconsider our decision you must answer the following questions . . .**

On page 5 of the decision (emphasis in original),

**Important:** You must mail or fax your answers to the Office of Administrative Hearings within **14 days** from the date the Dismissal With Right To Review order was mailed.

On page 2, the decision specifically distinguished between filing additional information and filing an application for review, and again reiterated the 14-day deadline (emphasis in original):

If you wish to have this decision reviewed, you have two options as outlined below. **Please note that different deadlines apply to the two options.** Your options for review are:

- 1) Provide additional requested information to the Office of Administrative Hearings for consideration; or,
- 2) Request review of this decision by the Employment Appeals Board.

\* \* \*

**You must provide the new information to the Office of Administrative Hearings within 14 days after the date this decision is mailed to you.**

(Emphasis in original.)

Therefore, although we have no doubt that parties may find the questionnaire return process and deadlines somewhat confusing, we cannot conclude that claimant was not informed of his deadline for returning the questionnaire. Given the extent to which the hearing decision instructs and informs parties about the distinction between filing questionnaire responses and applications for review, we cannot conclude that the ALJ erred in deeming claimant's response to the questionnaire late, and we agree with the ALJ that claimant's late request for hearing must be dismissed.

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-34182 is affirmed.

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

**DATE of Service:** April 9, 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.

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