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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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AAA 005.00
RP 000.00
MC 010.05

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0408

Affirmed
Late Requests for Hearing Dismissed
Ineligible
Overpayment Assessed

PROCEDURAL HISTORY: On August 19, 2014, the Oregon Employment Department (Department) served notice of a decision (# 80333) concluding that claimant failed to file his claim in accordance with the rules prescribed by the Director of the Department. On August 22, 2014, the Department served notice of an administrative decision (# 114912) concluding that claimant was not able to work for the period of July 20, 2014 through August 16, 2014 (weeks 30-14 through 33-14)). On September 8, 2014, decision #80333 became final with no request for hearing having been filed. On September 11, 2014, decision #114912 became final with no request for a hearing having been filed. On January 15, 2015, claimant filed late requests for hearing.

On January 30, 2015, ALJ Kangas issued two Hearing Decisions, 15-UI-32669 and 15-UI-32670, dismissing claimant's hearing requests on decisions # 114912 and # 80333 as untimely, subject to claimant's "right to renew" his requests by submitting an "Appellant Questionnaire" within 14 days of the date on which the decisions were mailed.¹ On February 17, 2015, the Office of Administrative Hearings (OAH) received claimant's late responses to the "Appellant Questionnaires." By letters dated March 30 2015, OAH informed claimant that his response to the "Appellant Questionnaires" would not be considered because it was late and that Hearing Decisions 15-UI-32669 and 15-UI-32670, dismissing claimant's late requests for hearing, remained in effect. On April 8, 2015, claimant filed applications for review with the Employment Appeals Board (EAB).

In his applications for review, claimant asked for an Arabic interpreter and also provided a number of documents in support of his claim for benefits. Under OAR 471-041-0090, 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 at a hearing.

¹ Hearing Decisions 15-UI-32669 and 15-UI-32670.

In response to the question on the “Appellant Questionnaire” as to why he did not file timely hearing requests, claimant responded that “I rely on my children for help interpretation [sic] and understanding for some matters.” He also stated that he never received the administrative decisions. Claimant also stated that he never received the administrative decisions at issue. To the extent that claimant’s failure to timely request hearings resulted from his limited English proficiency, claimant provided no explanation why he did not seek help from his children in communicating with the Department. In addition, it was within claimant’s reasonable control to request (or have his children request) that the Department provide him with an Arabic interpreter. To the extent that claimant’s failure to timely request hearings occurred because he did not receive the administrative decisions at issue, claimant provided no details about this issue, such as problems he experienced with his mail during the relevant period. Without such details, we have no reason to conclude that claimant’s lack of notice of the decisions was a circumstance beyond his reasonable control. Claimant has thus failed to demonstrate that circumstances beyond his reasonable control prevented him from timely requesting hearings at which he could have presented the evidence he now wants EAB to consider. Claimant’s request to have EAB consider new information under OAR 471-041-0090 is therefore denied

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-32699 and 15-UI-32670. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-0407 and 2015-EAB-0408).

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decisions under review are **adopted**.

DECISION: Hearing Decisions 15-UI-32699 and 15-UI-32670 are affirmed. Administrative decisions # 114912 and # 80333 remain undisturbed.

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

DATE of Service: April 14, 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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