

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0698**

*Affirmed*  
*Late Request for Hearing Dismissed*  
*Penalty Weeks Assessed*

**PROCEDURAL HISTORY:** On August 6, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant willfully made a misrepresentation to obtain benefits, and assessing a \$1,562 overpayment, \$234.30 in monetary penalties and 13 penalty weeks based on under-reported income. On August 26, 2013, the overpayment decision became final without a request for hearing having been filed. On April 23, 2015, claimant filed a late request for hearing.

On April 30, 2015, ALJ Kangas issued Hearing Decision 15-UI-37697, dismissing claimant's request for hearing 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 the decision was mailed.<sup>1</sup> Claimant submitted a timely response to the Office of Administrative Hearings (OAH). On May 20, 2015, OAH issued a "Cancellation of Hearing Decision" for Hearing Decision 15-UI-37697. On June 3, 2015, ALJ Wiperman conducted a hearing, and on June 4, 2015 issued Hearing Decision 15-UI-39541, re-dismissing claimant's late request for hearing. On June 8, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

In Hearing Decision 15-UI-39541, the ALJ concluded that claimant's failure to file a timely hearing request resulted from circumstances beyond claimant's reasonable control. The ALJ noted, however, that although claimant received a copy of the decision after she spoke with a Department representative on or about November 8, 2014, she did not file her hearing request until April 23, 2015. The ALJ

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<sup>1</sup> Hearing Decision 15-UI-37697.

therefore concluded that claimant failed to file her hearing request within a reasonable time after the circumstances that prevented her timely filing ceased to exist, as required under ORS 657.875 and OAR 471-040-0010(3) (February 10, 2012). Hearing Decision 15-UI-39541 at 6. In her written argument, claimant takes issue with the ALJ's conclusion. She asserted that she only became aware of the need to appeal the administrative overpayment decision when she applied for unemployment benefits in April 2015, and learned that the decision disqualified her from 13 weeks of benefits.

Claimant's apparent inability to fully understand the decision she received in November 2014 does not provide good cause for her untimely hearing request. OAR 471-030-0010(1)(b)(B) provides that "[n]ot understanding the implications of a decision or notice when it is received" does not constitute good cause for filing a late hearing request.

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-35928 is affirmed. The administrative decision issued August 6, 2013 remains undisturbed.

Susan Rossiter and J. S. Cromwell;  
D. P. Hettle, *pro tempore*, not participating.

**DATE of Service: June 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](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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