

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0874-R

Request for Reconsideration Dismissed
Employment Appeals Board Decision 2015-EAB-0874 Remains Undisturbed

PROCEDURAL HISTORY: On September 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$1,286 overpayment, \$385.80 monetary penalty and 10 penalty weeks (decision # 194540). On October 16, 2014, decision # 194540 became final without a request for hearing having been filed. On June 3, 2015, claimant filed a late request for hearing. On June 11, 2015, ALJ Kangas issued Hearing Decision 15-UI-39930, dismissing claimant's request for hearing subject to claimant's right to renew the request by submitting a response to an appellant questionnaire by June 25, 2015. On July 7, 2015, the Office of Administrative Hearings (OAH) received claimant's response. On July 14, 2015, ALJ Kangas mailed a letter to claimant stating that his response was received late, and would not be considered. On July 21, 2015, claimant filed a timely application for review with the Employment Appeals Board (EAB). On July 23, 2015, EAB issued Employment Appeals Board Decision 2015-EAB-0874, dismissing claimant's late request for hearing. On July 27, 2015, claimant filed a request for reconsideration of 2015-EAB-0874.¹ This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSION AND REASONS: Claimant's request for reconsideration is dismissed.

OAR 471-041-0145 allows parties to request reconsideration of an EAB decision to, among other things, "correct an error of material fact or law." A party's request for reconsideration is subject to dismissal unless it "[i]ncludes a statement that a copy has been provided to the other parties." OAR 471-041-0145(2)(a) (October 29, 2006). Claimant did not include any such statement in his request. His request is, therefore, dismissed.²

¹ On the cover page of claimant's request for reconsideration, he wrote, "This is my appeal for the July 24, 2015 Decision of #15-UI-39930." If claimant's intent in filing his request was to appeal EAB's decision to the Court of Appeals, please see the "NOTE" section on page 2 of EAB Decision 2015-EAB-0874 or this decision for instructions on filing. Please note the filing deadline.

² Even if claimant had included a statement, the outcome of this matter would remain the same. Claimant requested reconsideration because, according to his request, EAB erred in dismissing his late request for hearing because he filed all his appeals on time. However, the record shows the administrative decision at issue in this matter became final on October 16,

DECISION: Claimant's request for reconsideration is dismissed. Employment Appeals Board Decision 2015-EAB-0874 remains undisturbed.

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

DATE of Service: July 28, 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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2014 and claimant did not file a request for hearing on that decision until almost eight months later, making the request almost eight months late. Claimant did not show that EAB erred in finding that claimant filed a late request for hearing in this matter.

Claimant also averred that "[t]he issue is I filed for unemployment in 2014 under the self employment administration the lady in the department says my pt time job has not bearing on unemployment as long as I operate my business. I followed the rules and in compliance. I been filing since March. Please change this decision or hear me." However, while the administrative decision underlying this case is an overpayment based on misreported earnings, that decision is final, and is not at issue in this matter unless and until claimant proved he was entitled to extend the filing period. Because claimant did not do so, as we concluded in EAB Decision 2015-EAB-0874, the decision may not be changed, and claimant is not entitled to a hearing.

For those reasons, had claimant's request for reconsideration not been dismissed, EAB would conclude we had made no mistake of fact or law when concluding that claimant filed a late request for hearing and was not entitled to have the filing period extended, and adhered to EAB Decision 2015-EAB-0874 on reconsideration.