

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0897**

*Affirmed*  
*Late Request for Hearing Denied*

**PROCEDURAL HISTORY:** On January 7, 2015 the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$5,703 overpayment, \$1,710.90 monetary penalty and 47 penalty weeks (decision # 195365). On January 27, 2015, that decision became final without a request for hearing having been filed. On June 12, 2015, claimant filed a late request for hearing by telephone. On June 18, 2015, ALJ Kangas issued Hearing Decision 15-UI-40247, dismissing claimant's request for hearing subject to his right to renew the request by responding to an appellant questionnaire within 14 days of the date it was mailed. On July 7, 2015, OAH received claimant's response.<sup>1</sup> On July 14, 2015, ALJ Kangas reviewed claimant's response and issued Hearing Decision 15-UI-41442, re-dismissing claimant's late request for hearing. On July 23, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB received claimant's argument, in which he claimed that he was not overpaid benefits. Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision. However, even if we had, the outcome of this decision would remain the same. The only issue before EAB on review is whether or not claimant filed a timely request for hearing on decision # 195365, and, if the request was late, whether claimant showed that factors or circumstances beyond his reasonable control or an excusable mistake prevented a timely filing. If the record shows that he did not, then claimant's request for hearing must be dismissed and we do not have jurisdiction to address the merits of decision # 195365. For the reasons explained in Hearing Decision 15-UI-41442, we conclude that he did not meet that burden, and his request must be dismissed.<sup>2</sup>

<sup>1</sup> Although claimant's response was received after the 14-day period expired, for unknown reasons ALJ Kangas reviewed his request.

<sup>2</sup> If claimant has information proving that he did not claim or did not receive the benefits specified in decision # 195365, or that he was not overpaid, nothing in this decision prevents him from contacting the Department directly to provide that information.

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-41442 is affirmed.

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

**DATE of Service:** July 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](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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