

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1227**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On April 29, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$2,250 overpayment, \$337.50 monetary penalty and 17 penalty weeks (decision # 200679). On May 19, 2015, decision # 200679 became final without a request for hearing having been filed. On June 17, 2015, claimant filed a late request for hearing by phone. On June 24, 2015, claimant re-requested a hearing by mail. On July 6, 2015, ALJ Kangas issued Hearing Decision 15-UI-41116, dismissing claimant's requests for hearing as untimely, subject to claimant's right to renew the request by responding to an appellant questionnaire with 14 days after the date the hearing decision was mailed. On July 22, 2015, claimant mailed her response to the Office of Administrative Hearings (OAH). On August 10, 2015, OAH received claimant's response. On August 31, 2015, OAH issued a letter titled "Cancellation of Hearing Decision," cancelling Hearing Decision 15-UI-41116 and stating that a hearing would be scheduled on claimant's late request for hearing. On September 16, 2015, ALJ Triana conducted a hearing, and on September 17, 2015 issued Hearing Decision 15-UI-44467, dismissing claimant's late request for hearing. On October 5, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

Claimant stated in her argument that she was seeking and intended to provide EAB with phone records showing how many times she called the Department during the period between receiving decision # 200679 and her June 17<sup>th</sup> telephone request for hearing. However, the phone records would not be considered by EAB unless she established that factors or circumstances beyond her control prevented her from seeking and providing the letters during the hearing, which she has not done. Moreover, although the ALJ mentioned in her decision that she disbelieved claimant's testimony about the number of times she called or attempted to call the Department, the ALJ's finding about the calls is not

determinative of the good cause issue in this case. Assuming that claimant accurately testified about the number and results of the calls she attempted to the Department, or even if the record showed that claimant had made attempts to call the Department each day between receiving decision # 200679 and the date that decision became final, the outcome of EAB's decision would remain the same. The record shows that claimant received decision # 200679 by early May, understood the deadline associated with requesting a hearing on that decision, and decided not to request one within the period provided. She did not provide any explanation as to why it was beyond her control to simply return the request for hearing form attached to the decision when unable to reach the Department, or why her failure to do so should be considered an excusable mistake. To the extent she failed to file her request for hearing because she was confused about the implications of the decision, given her dispute about whether she worked for the employer named on the decision, OAR 471-040-0010(1)(b)(B), which defines "good cause," expressly states that "good cause" does not include not understanding the implications of a decision or notice when it is received.

Finally, claimant argued that, notwithstanding her late request for hearing, EAB should review the Department's determinations that claimant quit work with Tempworks Management Service and was overpaid benefits. However, the record fails to show that claimant requested a hearing on any determination by the Department that she worked for or had earnings from Tempworks Management Service, and, she did not show good cause for filing a late request for hearing on the overpayment decision. For those reasons, EAB does not have jurisdiction to review the Department's determinations.

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-44467 is affirmed.

Susan Rossiter and J. S. Cromwell

**DATE of Service:** October 23, 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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