

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1515

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On August 4, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 103844) concluding claimant was ineligible for benefits from June 7, 2015 to July 11, 2015 (weeks 23-15 to 27-15) because he did not actively seek work during that period. [sic] On August 24, 2015, decision # 103844 became final without claimant having requested a hearing.

On September 9, 2015, the Department served notice of an administrative decision based on decision # 103844 concluding that it had overpaid claimant \$2,200 (decision # 140604). On September 29, 2015, decision # 140604 became final without a request for hearing having been filed.

On November 17, 2015, claimant filed a late request for hearing that was construed as applying only to decision # 140604. On November 24, 2015, ALJ Kangas reviewed claimant's request and issued Hearing Decision 15-UI-48330, dismissing claimant's hearing request as late, subject to his right to renew the request by responding to an appellant questionnaire by December 8, 2015. On December 4, 2015, the Office of Administrative Hearings received claimant's response. On December 10, 2015, ALJ Kangas reviewed claimant's response, and issued Hearing Decision 15-UI-49175, re-dismissing claimant's late request for hearing.

With claimant's application for review, he argued that he "should Not [sic] have to pay, back to the state I was laid off an extra week," and explained that someone from employment said he could "just claim." We construe claimant's argument to mean that he does not believe he was overpaid benefits. However, claimant's case is before EAB on review of his late request for hearing on an overpayment decision only. Neither the overpayment decision itself, nor the decision concluding he was not entitled to benefits during his layoff, are before EAB on review. Before claimant could be entitled to a review of the merits of either the overpayment decision (# 140604) or the decision that created the overpayment (# 103844), claimant would have to establish "good cause" for having filed late requests for hearing on those decisions, and, with respect to the overpayment, claimant has not met that burden. Therefore, we agree with the ALJ's decision to dismiss claimant's request for hearing on decision # 140604.

We have reviewed department records and it appears that claimant has not pursued his appeal rights with respect to decision # 103844, the decision that concluded he did not actively seek work between weeks 23-15 and 27-15 that created the overpayment. If claimant believes that is in error, or if he would like to file what is now a late request for hearing on that decision, claimant should contact the Office of Administrative Hearings or the Department directly at (877) 345-3484. Claimant may file his request for hearing with the Department by telephone. OAR 471-040-0005(2)(a).

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-49175 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: December 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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