

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-1621

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On December 27, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 111433). On January 16, 2014, administrative decision # 111433 became final without a request for hearing having been filed. On October 31, 2014, the Department served notice of an administrative decision (decision #195051) assessing a \$10,567 overpayment, \$1,585.05 in monetary penalties, and 52 penalty weeks based on decision # 111433. On November 17, 2014, claimant filed a late request for hearing on decision # 111433 and a timely request for hearing on decision #195051.

On November 28, 2014, the Office of Administrative Hearings (OAH) issued notices of two hearings scheduled for December 15, 2014, one at 9:30 a.m. and one at 10:45 a.m. Claimant appeared at the first hearing regarding decision # 111433, but failed to appear at the 10:45 a.m. hearing regarding decision #195051. On December 15, 2014, ALJ R. Davis issued two decisions. Hearing Decision 14-UI-30384 dismissed claimant's late request for hearing on decision # 111433, leaving decision # 111433 undisturbed. Hearing Decision 14-UI-30374 dismissed claimant's request for hearing on decision #195051 because she failed to appear, leaving decision #195051 undisturbed.

On January 2, 2015, claimant filed an application for review of both decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 14-UI-30384 and 14-UI-30374. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-1621 and 2015-EAB-1622).

With her application for review, claimant asked that the December 15, 2014 hearing on her overpayment be reopened, explaining that "I was not at the 10:30 (sic) hearing. I was at the 9:30 and it was dismissed. I was told to appeal if I disagree."

Claimant's request is construed as a request to present new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information shows it was prevented by circumstances beyond its control from presenting the information at the hearing. It appears claimant was confused about the ALJ's ruling on the record regarding dismissal of claimant's late request for hearing on decision # 111433, the decision concerning her voluntary quit, and that she incorrectly assumed her request for hearing on the overpayment decision, scheduled for 10:45 a.m., was dismissed. However, at the conclusion of the 9:30 a.m. hearing on the voluntary quit decision, the ALJ specifically reminded claimant that she had another hearing at 10:45 a.m. Audio at ~ 26. If claimant was confused, she had it within her reasonable control to seek clarification from the ALJ prior to the overpayment hearing. Accordingly, claimant's request to present new information is denied.

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 Decisions 14-UI-30384 and 14-UI-30374 are affirmed.

Susan Rossiter and Tony Corcoran;
J. S. Cromwell, not participating.

DATE of Service: January 7, 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 website at court.oregon.gov. Once on the website, click on the blue tab for "Materials and Resources." On the next screen, click on the tab that reads "Appellate Case Info." On the next screen, select "Appellate Court Forms" from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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