

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0402**

*Affirmed*  
*Confirmada*  
*Late Request for Hearing Denied*  
*Petición Tardía para Una Audiencia Negada*

**PROCEDURAL HISTORY:** On September 8, 2015, the Oregon Employment Department (the Department) served notice of the following administrative decisions: decision # 110345 and # 113242 concluded that claimant failed to accept suitable work; decision # 123919 concluded that claimant was not available for work from June 14 through July 11, 2015 (weeks 24-15 through 27-15); and decision # 125656 concluded that claimant was not available for work from July 12 through September 5, 2015 (weeks 28-15 through 25-15). On September 25, 2015, the Department served notice of an administrative decision (decision # 195552) which assessed a \$1,310 overpayment, \$393 monetary penalty and 10 penalty weeks. On September 28, 2015, decisions # 110345, 113242, 123919 and 125656 became final without requests for hearing having been filed. On October 15, 2015, decision # 195552 became final without a request for hearing having been filed.

On January 15, 2016, claimant filed late requests for hearing on decisions # 110345, # 113242, # 123919, # 125656, and # 195552. On January 20, 2016, ALJ Kangas issued the following hearing decisions which dismissed claimant's hearing requests as untimely: Hearing Decision 16-UI-51399 dismissed claimant's request for hearing on decision # 195552; Hearing Decision 16-UI-51401 dismissed claimant's request for hearing on decision # 110345; Hearing Decision 16-UI-51402 dismissed claimant's request for hearing on decision # 123919; Hearing Decision 16-UI-51403 dismissed claimant's request for hearing on decision # 125656; and Hearing Decision 16-UI-51386 dismissed claimant's request for hearing on decision # 113242. All five hearing decisions were subject to claimant's right to renew his hearing requests by responding to appellant questionnaires within 14 days. Claimant timely responded to the appellant questionnaires. By letters dated January 20, 2016, the Office of Administrative Hearings cancelled the five hearing decisions issued on January 15, 2016.

On March 15, 2016, ALJ Triana conducted a consolidated hearing on claimant's five hearing requests, and on March 16, 2016 issued the following hearing decisions re-dismissing claimant's hearing requests as untimely: Hearing Decision 16-UI-55161 dismissed claimant's hearing request on decision #

195552; Hearing Decision 16-UI-55162 dismissed claimant's hearing request on decision # 125656; Hearing Decision 16-UI-55163 dismissed claimant's hearing request on decision # 123919; Hearing Decision 16-UI-55164 dismissed claimant's request for hearing on decision # 110345; and Hearing Decision 16-UI-55182 dismissed claimant's request for hearing on decision # 113242. On April 5, 2016, claimant filed applications for review of the five hearing decisions issued on March 15, 2016 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-55161, 16-UI-55162, 16-UI-55163, 16-UI-55164, and 16-UI-55182. For case-tracking purposes, this decision is being issued in quintuplicate (EAB decisions 2016-EAB-0401, 2016-EAB-0402, 2016-EAB-0403, 2016-EAB-0404 and 2016-EAB-0405).

On April 8, 2016, claimant submitted a letter to EAB asking that his hearings be reopened. In support of his request, claimant noted that he left the March 15, 2016 telephone hearing before it ended, and did not rejoin it before the conclusion of the hearing. Claimant explained that he "was unable to end the hearing (by phone) because the battery on my phone was dead and I was unable to hear the end."<sup>1</sup> Claimant's request is construed as a request to have EAB consider additional evidence under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented the party from presenting the information at the hearing. Claimant provided no explanation why his battery was dead. Without such an explanation we have no basis for concluding that the dead battery resulted from circumstances beyond claimant's reasonable control. Claimant's request to present new evidence is therefore denied.

EAB reviewed the hearing record in these cases. On *de novo* review and pursuant to ORS 657.275(2), the hearing decisions under review are **adopted**.

**DECISION:** Hearing Decisions 16-UI-55161, 16-UI-55162, 16-UI-55163, 16-UI-55164, and 16-UI-55182 are affirmed.

*Decisiones de la Audiencia 16-UI-55161, 16-UI-55162, 16-UI-55163, 16-UI-55164, and 16-UI-55182 quedan confirmadas.*

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

**DATE of Service: April 15, 2016**

**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.

---

<sup>1</sup> The record shows that the claimant disconnected from the March 15 hearing approximately 7 minutes before it ended.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

***NOTA:** Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en ***courts.oregon.gov***. En este sitio web, hay información disponible en español.*

**Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente.** Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.