

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0878

Applications for Review Dismissed

PROCEDURAL HISTORY: On April 13, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 74905) concluding that claimant failed to actively search for work from February 21 through March 5, 2016 (weeks 8-16 and 9-16). On May 3, 2016, decision # 74905 became final without a request for hearing having been filed. On May 25, 2016, the Department served notice of an administrative decision (# 114122) that assessed a \$1,050 overpayment based on decision # 74905. On June 14, 2016, claimant filed a timely request for hearing on decision # 114122 and an untimely request for hearing on decision # 74905. On July 5, 2016, ALJ Murdock conducted a hearing and on July 7, 2016, issued Hearing Decision 16-UI-63344, affirming decision # 114122, the overpayment decision. On July 8, 2016, ALJ Murdock issued Hearing Decision 16-UI-63415, dismissing as claimant's late request for hearing on decision # 74905. On July 27, 2016, claimant's employer, R&H Construction, filed applications for review.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-63344 and 16-UI-63415. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0878 and 2016-EAB-0879).

CONCLUSION AND REASONS: The applications for review are dismissed.

ORS 657.270(6) provides that the decision of an ALJ is final unless the Department or "other party to the hearing files an application for review with the Employment Appeals Board." ORS 657.275(1) restricts review of an ALJ's decision to the Department director or "any interested party." ORS 183.310(7) defines a "party" as a person entitled by right to a hearing, a person named by the agency to be a party, or a person asking to participate in the hearing which the agency determines has an interest in the outcome of the proceedings or represents a public interest in the result of the proceeding.

Here, the employer who filed the application for review was not entitled by right to a hearing on decisions # 74905 – concerning claimant's work search – or # 114122 – concerning unemployment benefits claimant received. The record contains no evidence that the Department named the employer as a party or that the employer requested to participate in the hearing. For these reasons, the employer was

not a party to the hearing and is not an interested party with standing to request review of the hearing decisions by EAB. The applications for review must therefore be dismissed.

DECISION: The applications for review filed July 27, 2016 are dismissed. Hearing Decisions 16-UI-63415 and 16-UI-63344 remain undisturbed.¹

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

DATE of Service: August 4, 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. 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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¹ A copy of this decision has been provided to R&H Construction, 1530 SW Taylor St., Portland, OR 97205