

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0978

Affirmed
Late Requests for Hearing Denied

PROCEDURAL HISTORY: On January 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 83532) concluding that claimant was not available for work from October 25, 2015 until January 9, 2016 (weeks 43-15 through 1-16). On February 16, 2016, decision # 83532 became final without a request for hearing having been filed. On April 5, 2016, the Department served notice of an administrative decision (decision # 110529) assessing a \$1,247 overpayment, based on decision # 83532. On April 25, 2016, decision # 110529 became final without a request for hearing having been filed. On July 15, 2016, claimant filed late requests for hearing on decisions # 83532 and # 110529. On July 20, 2016, ALJ Kangas issued the following two hearing decisions: Hearing Decision 16-UI-64135 dismissed claimant's request for hearing on decision # 83532, and Hearing Decision 16-UI-64136 dismissed claimant's request for hearing on decision # 110529. Both hearing decisions were subject to claimant's right to renew the requests for hearing by responding to appellant questionnaires within 14 days. Claimant timely responded to the appellant questionnaires. On August 3, 2016, ALJ Kangas issued the following hearing decisions: Hearing Decision 16-UI-64947 re-dismissed claimant's request for hearing on decision # 83532 and Hearing Decision 16-UI-64956 re-dismissed claimant's request for hearing on decision # 110529. On August 23, 2016, claimant filed applications for review with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-64956 and 16-UI-64957. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0978 and 2016-EAB-0979).

On her applications for review, claimant wrote that she "need[ed] to know how to submit voicemails as documentation – called 2 times asking." Claimant's request is construed as a request to have EAB consider new information under OAR 471-041-0090(2), which allows EAB to consider information not offered into the hearing record if the party presenting the information demonstrates the information is material and relevant to EAB's determination, and also demonstrates that circumstances beyond the party's reasonable control prevented the party from offering the information into the hearing record. Claimant failed to demonstrate why the voicemail messages she wants to submit are relevant or material

to the issue before EAB: whether the ALJ erred in concluding that she did not show good cause for filing late requests for hearing as required by ORS 857.875 and OAR 471-040-0010 (July 14, 2011). Nor did claimant demonstrate that circumstances beyond her reasonable control prevented her from offering the information with her requests for hearing or her responses to the appellant questionnaires attached to Hearing Decisions 16-UI-64135 and 16-UI-64136. Claimant's request to present new evidence is therefore denied.

EAB reviewed the entire 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-64946 and 16-UI-64947 are affirmed.

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

DATE of Service: September 6, 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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