

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1040

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On April 20, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant failed to register for work. On May 10, 2016, that decision became final without claimant having filed a timely request for hearing. On June 21, 2016, the Department served notice of a second administrative decision concluding benefits were not payable to claimant during the period between two academic years (decision # 92052). On July 11, 2016, decision # 92052 became final without claimant having filed a timely request for hearing. On August 11, 2016, claimant filed late requests for hearing on both administrative decisions. On August 16, 2016, ALJ Kangas reviewed claimant's requests and issued Hearing Decisions 16-UI-65736 and 16-UI-65737, dismissing claimant's requests for hearing as late, subject to his right to renew the requests by responding to appellant questionnaires by August 30, 2016. Claimant did not timely respond to the questionnaires. On September 6, 2016, claimant filed applications for review of Hearing Decisions 16-UI-65736 and 16-UI-65737 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-65736 and 16-UI-65737. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-1039 and 2016-EAB-1040).

Claimant failed to certify that he provided a copy of his argument to the other party to Hearing Decision 16-UI-68737 as required by OAR 471-041-0080(2)(a) (October 29, 2006). With respect to both hearing decisions under review, the argument also contained information that was not part of the hearing record, and failed to show under OAR 471-041-0090 (October 29, 2006) that factors or circumstances beyond his reasonable control prevented him from offering the information to the ALJ as a timely response to the appellant questionnaires. For those reasons, we did not consider the argument when reaching this decision. See ORS 657.275(2). Even if we had, however, the outcome of this decision would remain the same. Claimant argued that he should not have been disqualified for benefits in these matters because he had been allowed benefits in previous proceedings by EAB and the Office of Administrative Hearings (OAH) and "had no reason to believe [his eligibility] had to be reproven [*sic*] for each break period." We disagree. The issue before EAB in the case that claimant referenced was whether claimant should be disqualified for benefits based on a work separation, and the case before OAH involved

whether benefits were payable to claimant during a spring break period. The issues in the two cases now before EAB are claimant's failure to register for work and whether benefits were payable to claimant during a summer recess period. Given that the current cases involve facts and issues distinct from the earlier cases, and that the Department issued new notices to claimant in April and June denying him benefits on these new facts and issues, we conclude that claimant did have reason to believe that these matters required his attention. Claimant was given notices of the benefit denials, advised on the notices of the appeal periods for each denial, and chose not to request hearings on either matter. He did not assert or show that any factors or circumstances beyond his reasonable control or excusable mistake(s) prevented him from requesting hearings within the designated appeal periods.¹ As such, there is no basis in fact to disturb the ALJ's dismissal of claimant's hearing requests for failure to show good cause for filing late requests for hearing.

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 16-UI-65736 and 16-UI-65737 are affirmed.

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

DATE of Service: September 9, 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.

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.

¹ We note that OAR 471-040-0010(1)(b)(B) specifically states for purposes of late requests for hearing that not understanding the implications of a decision or notice when it is received is *not* considered good cause.