

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1433-R-R**

*Request for Reconsideration Granted*  
*EAB Decision 2017-EAB-1433-R Adhered to on Reconsideration*

**PROCEDURAL HISTORY:** On August 16, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was overpaid \$3540 in benefits (decision # 142702). On September 5, 2017, decision # 142702 became final without claimant having filed a request for hearing. On October 16, 2017, claimant filed a late request for hearing. On October 23, 2017, ALJ Kangas issued Hearing Decision 17-UI-95115, dismissing claimant's request for hearing subject to his right to renew the request by filing a response to an appellant questionnaire by November 6, 2017. Claimant filed a timely response to the appellant questionnaire. On November 9, 2017, the Office of Administrative Hearings (OAH) cancelled and vacated Hearing Decision 17-UI-95115, and on November 20, 2017 scheduled a hearing for December 5, 2017. On December 5, 2017, ALJ Meerdink conducted a hearing and issued Hearing Decision 17-UI-98280, re-dismissing claimant's request for hearing as untimely without good cause. On December 12, 2017, claimant filed an application for review of Hearing Decision 17-UI-98280 with the Employment Appeals Board (EAB).

On December 21, 2017, EAB issued EAB Decision 2017-EAB-1433, affirming and adopting Hearing Decision 17-UI-98280. On December 28, 2017, EAB received a timely written argument from claimant, which he mailed on December 26, 2017, apparently before he received and reviewed EAB Decision 2017-EAB-1433. On January 5, 2018, EAB issued EAB Decision 2017-EAB-1433-R adhering to EAB Decision 2017-EAB-1433 on reconsideration in light claimant's timely written argument, pursuant to EAB's authority under ORS 657.290(3). On January 24, 2018, claimant filed a timely request for reconsideration of EAB Decision 2017-EAB-1433-R. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

**CONCLUSIONS AND REASONS:** Request for reconsideration of Decision 2017-EAB-1433-R granted. EAB Decision 2017-EAB-1433-R adhered to on reconsideration.

ORS 657.290(3) provides that EAB, upon application of any party in interest, may reconsider any previous EAB Decision, which may include the making of a new decision to the extent necessary for the correction of previous error of fact or law. Pursuant to ORS 657.290(3), OAR 471-041-0145(1)

(October 29, 2006) states that any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Department rule, officially stated Department position, or prior Department practice.

In his request for reconsideration, claimant asked EAB to consider new information regarding his failure to file a timely request for hearing on decision # 142702. However, information not received into evidence at the hearing will not be considered on review unless the party offering the information establishes that factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006). In support of his request for EAB to consider his new information, claimant asserted that he did not offer the information into evidence at the December 5, 2017 hearing because he did not think the information was material to whether he had good cause for filing a late request for hearing on decision # 142702. However, we reviewed the hearing record in its entirety, and the ALJ gave claimant reasonable opportunity for a fair hearing as required by ORS 657.270(3) and OAR 471-040-0025(1) (August 1, 2004). *See* Audio Record at 4:00-9:15, 21:45-33:15, 35:15-37:30. Claimant failed to establish that it was beyond his reasonable control to provide all relevant information regarding his failure to file a timely request for hearing, regardless of whether he thought the information was material to whether he had good cause for filing a late request. Claimant's request for EAB to consider his new information therefore is denied. EAB considered only information received into evidence at the hearing.

In his request for reconsideration, claimant did not assert or show that, based on the hearing record, Hearing Decision 17-UI-98280 contained any material errors of fact or law, or any inconsistencies with Department rules, officially stated Department positions, or prior Department practice. Nor did claimant assert or show that, based on the hearing record, EAB Decision 2017-EAB-1433, which affirmed and adopted Hearing Decision 17-UI-98280, contained any material errors of fact or law, or any inconsistencies with Department rules, officially stated Department positions, or prior Department practice. Nor did claimant assert or show that EAB Decision 2017-EAB-1433-R, which adhered to EAB Decision 2017-EAB-1433 on reconsideration in light claimant's timely written argument, contained any errors of law, or any inconsistencies with Department rules, officially stated Department positions, or prior Department practice. EAB Decision 2017-EAB-1433-R therefore is adhered to on reconsideration.

**DECISION:** EAB Decision 2017-EAB-1433-R is adhered to on reconsideration. Claimant's late request for hearing on administrative decision # 142702 is dismissed. Decision # 142702 remains undisturbed.

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

**DATE of Service:** February 9, 2018

**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.

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