

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1451**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On March 19, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, assessing a \$5,868 overpayment and \$1,760.40 monetary penalty, and disqualifying claimant from 43 weeks of future benefits (decision # 200371). On April 8, 2015, decision # 200371 became final without claimant having filed a request for hearing. On October 25, 2017, claimant filed a late request for hearing. On October 30, 2017, ALJ Kangas issued Hearing Decision 17-UI-95699, dismissing claimant's request for hearing subject to his right to renew his request by filing a response to an appellant questionnaire by November 13, 2017. On 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-95699, and on November 14, 2017 served notice of a hearing scheduled for November 29, 2017. On November 29, 2017, ALJ Wyatt conducted a hearing on claimant's late request for hearing on decision # 200371, and on December 6, 2017 issued Hearing Decision 17-UI-98414, re-dismissing claimant's request for hearing as untimely without good cause. On December 19, 2017, claimant filed an application for review of Hearing Decision 17-UI-98414 with the Employment Appeals Board (EAB).

Claimant submitted written argument with his application for review, which EAB considered to the extent it addressed the only issue before EAB, which is whether claimant's late request for hearing on decision # 200371 should be dismissed. In his argument, claimant asserted that with the November 14, 2017 notice of hearing, he received a letter that he mailed the Department "in 2015," which is proof that he "did respond to the employment to the employment department in a timely manner," and that he was "not clear if this letter/document was or was not considered" at the November 29, 2017 hearing. However, although the letter was not admitted into evidence at the hearing, claimant testified that he provided the letter to the Department on March 13, 2015, which is six days before the Department served notice of decision # 200371. Audio Record at 34:15-39:00, 42:25-43:00. Claimant therefore could not have requested a hearing on decision # 200371 in the letter.

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 Decision 17-UI-98414 is affirmed.

J. S. Cromwell and D. P. Hettle.

**DATE of Service: December 22, 2017**

**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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