

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0073-R

Affirmed On Reconsideration
Late Request for Hearing is Dismissed

PROCEDURAL HISTORY: On November 9, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 82446). On November 21, 2017, decision # 82446 became final without claimant having filed a timely request for hearing. On December 26, 2017, claimant filed a late request for hearing. On December 28, 2017, ALJ Kangas issued Hearing Decision 17-UI-99883, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by January 11, 2017. On January 4, 2018, the Office of Administrative Hearings (OAH) received claimant's response. On January 11, 2018, ALJ Kangas considered claimant's response and issued Hearing Decision 18-UI-100760, re-dismissing claimant's request for hearing. On January 17, 2018, claimant filed an application for review with the Employment Appeals Board (EAB). On January 25, 2018, EAB issued EAB Decision 2018-EAB-0073-R, affirming Hearing Decision 18-UI-100760. On January 26, 2018, EAB received claimant's timely written argument.

EAB erred by issuing its decision in this matter before the expiration of the written argument due date. This decision is therefore issued pursuant to EAB's authority under ORS 657.290(3) to reconsider previous decisions of EAB upon our own motion.

In written argument, claimant argued, in essence, that he should not be disqualified from benefits based upon his work separation from the employer's staffing service and should not be considered overpaid benefits based upon such a disqualification. He also argued that he believed he followed the rules with regard to the staffing agency and filing for unemployment insurance benefits, he has repeatedly attempted to explain his situation, and he has not been allowed to explain and should be allowed the opportunity to do so. Although we understand that claimant's situation involves a work separation and an overpayment, because he did not file a timely request for hearing on the Department's work separation decision (decision # 82446) the *only* matter EAB has jurisdiction to review is whether or not claimant had good cause for filing a late request for hearing on decision # 82446. Claimant admitted both in his written argument and during proceedings with OAH that he received and disregarded the Department's decision denying him benefits because he did not currently need benefits and did not

understand that he could still be affected by the decision until he found out the Department was seeking repayment of the benefits he had received. Knowingly disregarding a matter under those circumstances does not amount to good cause. We therefore concluded, both before and on reconsideration, that claimant's late request for hearing was appropriately dismissed.

On reconsideration, EAB reviewed the entire hearing record and claimant's timely filed written argument. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is again **adopted**.

DECISION: On reconsideration we adhere to EAB Decision 2018-EAB-0073. Hearing Decision 18-UI-100760 is affirmed.

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

DATE of Service: February 8, 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. 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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