

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0122

Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On September 19, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$356 overpayment that claimant was liable to repay or have deducted from future benefits otherwise payable (decision # 195462). On September 22, 2017, the Department served notice of an amended administrative decision modifying the overpayment amount to \$506 (decision # 193658). Claimant filed a timely request for hearing. On December 21, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for January 5, 2018. On January 5, 2018, ALJ M. Davis conducted a hearing, at which claimant appeared, and continued the hearing upon claimant's request. On January 5, 2018, OAH mailed notice of the continued hearing scheduled for January 19, 2018. On January 19, 2018, ALJ M. Davis conducted the continued hearing, at which claimant failed to appear, and issued Hearing Decision 18-UI-101287, affirming decision # 193658. On February 1, 2018, claimant filed an application for review of Hearing Decision 18-UI-101287 with the Employment Appeals Board (EAB).

With her application for review, claimant asked for another opportunity to testify since she did not appear at the January 19th continued hearing. Claimant's request is construed as a request to submit new information to EAB. EAB may consider new information that is not part of the record if the information is relevant and material to EAB's determination and the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. OAR 471-040-0090 (October 29, 2006). In support of her request, claimant argued that although she "was at the original hearing, & requested a continuation" she did not appear at the continued hearing because she "did not know it was going to be scheduled that soon" and "was unaware the day it was taking place" because "[f]rom what was said January 5, 2018 [she] thought it would be scheduled further out." During the January 5, 2018 hearing, however, the ALJ specifically stated that the new notice of hearing for the continued hearing "will go out as soon as possible," and that if claimant did not receive the notice "by next week" she should call OAH. Audio recording at ~ 25:43-

27:20; 29:08. The ALJ also stated, “I’m going to have this rescheduled as soon as we can, obviously it can’t happen for a couple of weeks . . .” *Id.* Thereafter, OAH mailed claimant notice of the continued hearing on January 5th, which was “as soon as possible” after the January 5th hearing, and scheduled the hearing to take place 14 days later, which was exactly “a couple of weeks” after the January 5th hearing. Under those circumstances, it is not apparent why claimant did not know from the notice of hearing mailed to her when the continued hearing would take place, nor does it appear that factors or circumstances beyond claimant’s reasonable control prevented her from appearing at that hearing. Claimant’s request to submit new information is, therefore, denied.

In addition to the statements claimant submitted with her application for review claimant submitted another written argument to EAB, which was received on February 27, 2018, one day after the deadline for submission of written argument expired. In that argument, claimant asked that EAB extend the written argument deadline and consider her argument. In support, she argued that someone stole her mail, including the letter EAB sent claimant that established the deadline for submission of written argument, and the mail was not returned to her until February 23rd. Claimant stated on her argument, “I see . . . that I am supposed to have it to you by the 26th of February. I am writing this the same day I received it [on February 23, 2018], & hope that me doing my best will be good enough.” Although claimant apparently received and wrote the written argument on February 23rd, three days before the written argument deadline expired, she did not submit it to EAB until February 27th, one day after the deadline. Given that claimant had her argument prepared three days prior to the written argument deadline, knew when the deadline was, and did not assert or show anything that prevented her from submitting her written argument to EAB between February 23rd and the February 26th deadline, she failed to show reason why the deadline should be extended. Her request to extend the deadline is therefore denied. Even if we had extended the deadline, however, the outcome of this decision would remain the same for the reasons explained herein and in Hearing Decision 18-UI-101287.

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 18-UI-101287 is affirmed.

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

DATE of Service: March 2, 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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