

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0158**

*Affirmed*  
*Late Request for Hearing Allowed*  
*Overpayment, No Penalties*

**PROCEDURAL HISTORY:** On August 16, 2017, the Oregon Employment Department (the Department) made a decision concluding claimant voluntarily left work for the employer without good cause, but did not serve notice of that decision upon the parties. On August 17, 2017, the Department served notice of an administrative decision (decision # 193551) assessing a \$5,490 overpayment, an \$823.50 monetary penalty and 38 penalty weeks, stating that it was based on the August 16<sup>th</sup> administrative decision. On August 18, 2017, the Department served notice of its administrative decision concluding claimant voluntarily left work for the employer without good cause (decision # 74637). On August 23, 2017, the Department issued an administrative decision canceling decision # 193551 since the administrative decision on which it was based had not been mailed to the parties, and again assessing a \$5,490 overpayment, an \$823.50 monetary penalty and 38 penalty weeks (decision # 193046) based upon the August 18<sup>th</sup> administrative decision # 74637. On September 7, 2017, decision # 74637 became final without a request for hearing having been filed. On September 12, 2017, decision # 193046 became final without a request for hearing having been filed. On January 8, 2018, claimant filed an untimely request for hearing on decision # 193046.<sup>1</sup> On January 29, 2018, ALJ Clink conducted a hearing on decision # 193046, and on February 5, 2017 issued Hearing Decision 18-UI-102519, affirming decision # 193046. On February 14, 2018, claimant filed an application for review with the

<sup>1</sup> Department and OAH did not construe claimant's January 8<sup>th</sup> late request for hearing on the overpayment as applying to the August 18<sup>th</sup> decision concluding claimant voluntarily left work without good cause (decision # 74637). Department and OAH records also fail to show that claimant made another request for hearing that was applicable to decision # 74637. That August 18<sup>th</sup> decision is, therefore, now final as a matter of law. Unless and until claimant requests a hearing on decision # 74637, and establishes good cause for the late request for hearing and that the request was filed within a reasonable time, they have no legal right to dispute the nature of the work separation from the employer or dispute whether or not that work separation should be disqualifying. In so stating, we make no findings or conclusions as to whether or not claimant's January 8<sup>th</sup> late request for hearing should have been construed as applying to decision # 74637 – that is a matter for claimant to argue and the ALJ to decide in separate proceedings, should claimant choose to proceed. If claimant wants to pursue a hearing on decision # 74637, claimant should contact the Department or OAH to request a hearing; OAR 471-040-0010 provides that claimant will be required to show good cause for the late filing, and prove that they filed the late request for hearing *within seven days* of the date the circumstances that prevented a timely filing ceased to exist.

Employment Appeals Board (EAB). This decision is confined to review of Hearing Decision 18-UI-102519.

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-102519 is affirmed.

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

**DATE of Service:** March 13, 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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