

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0694

Affirmed
Late Request for Hearing Dismissed
Overpayment

PROCEDURAL HISTORY: On April 16, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 74715). On May 7, 2018, decision # 74715 became final without claimant having filed a timely request for hearing. On May 18, 2018, the Department served notice of another administrative decision, based on decision # 74715, assessing a \$1,122.00 overpayment that claimant was liable to repay (decision # 162249). On May 31, 2018, claimant filed a late request for hearing on decision # 74715 and a timely request for hearing on decision # 162249. On July 3, 2018, ALJ Scott conducted two hearings. On July 5, 2018, the ALJ issued Order No. 18-UI-112636, dismissing claimant's late request for hearing on decision # 74715. On July 9, 2018, the ALJ issued Order No. 18-UI-112731, affirming decision # 162249. On July 12, 2018, claimant filed timely applications for review of both decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders 18-UI-112636 and 18-UI-112731. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0693 and 2018-EAB-0694).

Claimant submitted a written argument to EAB that included an earnings statement for the period of February 19, 2018 through March 4, 2018. Claimant argued, in essence, that he should not have been disqualified from receiving benefits effective February 11th because his work separation from the employer occurred sometime after February 19th. Claimant claimed that his evidence "proves that decision . . . should be changed or amended." We do not disagree with claimant that evidence that he worked 16 hours for the employer between February 19th and March 4th and had earnings from work during that period suggests that he might not have been separated from work with that employer on February 13th. However, EAB does not have jurisdiction to review the merits of decision # 74715 because claimant did not preserve his rights to review by filing a timely request for hearing of that decision or, in the alternative, establish good cause to extend the filing period. EAB therefore does not have the legal authority to decide whether claimant underwent a work separation from the employer, or decide on what date that occurred. Claimant may choose to provide his earnings statement and other

evidence regarding his work separation directly to the Department and request that his work separation be re-adjudicated, but for purposes of this decision the law requires that EAB's review of decision # 74715 be confined to review of whether claimant established good cause to extend the filing period.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the Orders under review are **adopted**.

DECISION: Order Nos. 18-UI-112636 and 18-UI-112731 are affirmed.

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

DATE of Service: July 25, 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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