

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0781-R

Request for Reconsideration Granted
EAB Decisions 2018-EAB-0769 and 2018-EAB-0781 Adhered to on Reconsideration

PROCEDURAL HISTORY: On April 26, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 111714). On May 16, 2018, decision # 111714 became final without claimant having filed a request for hearing. On June 19, 2018, the Department served notice of an administrative based on decision # 111714, concluding that claimant was overpaid \$14,553 in benefits that she must repay the Department (decision # 124611). On July 9, 2018, decision # 124611 became final without claimant having requested a hearing. On July 17, 2018, claimant filed late requests for hearing on decisions # 111714 and # 124611. On July 19, 2018, ALJ Kangas issued Order Nos. 18-UI-113450 and 18-UI-113448, dismissing claimant's late requests for hearing subject to her right to renew the requests by responding to an appellant questionnaire by August 2, 2018. On August 3, 2018, claimant filed a late response to the appellant questionnaire with the Office of Administrative Hearings (OAH) and timely applications for review of Order Nos. 18-UI-113450 and 18-UI-113448 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 18-UI-113450 and 18-UI-113448. For case-tracking purposes, the decision was issued in duplicate (EAB Decisions 2018-EAB-0769 and 2018-EAB-0781). EAB considered both hearing records, including claimant's response to the appellant questionnaire, which EAB marked and received into evidence as EAB Exhibit 1 pursuant to OAR 471-041-0090(1), under which exhibits offered but not received into evidence may be received into evidence as necessary to complete the record.

On August 17, 2018, EAB issued EAB Decisions 2018-EAB-0769 and 2018-EAB-0781, dismissing claimant's late requests for hearing on decisions # 111714 and # 124611 as untimely without a showing of good cause. On August 24, 2018, claimant filed a request for reconsideration. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its reconsideration of EAB Decisions 2018-EAB-0769 and 2018-EAB-0781. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0769-R and 2018-EAB-0781-R).

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is granted. EAB Decisions 2018-EAB-0769 and 2018-EAB-0781 are adhered to on reconsideration.

ORS 657.290(3) provides that EAB, upon application of any party in interest, may reconsider any previous EAB Decision for the correction of previous error of fact or law. Thus, any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Department rule, or officially stated Department position, or prior Department practice. OAR 471-041-0145(1) (October 29, 2006). The request is subject to dismissal unless it includes a statement that a copy has been provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered is mailed. OAR 471-041-0145(2).

Here, claimant's request for reconsideration included a statement that a copy was provided to the other parties, and the request was filed 7 days after EAB Decisions 2018-EAB-0769 and 2018-EAB-0781 were mailed. Claimant's request for reconsideration of EAB Decisions 2018-EAB-0769 and 2018-EAB-0781 therefore is granted.

In her request for reconsideration, claimant argued that she had good cause to quit working for the employer. However, the only issue before us was whether claimant's requests for hearing on decisions # 111714 and # 124611 should be dismissed as untimely without a showing of good cause. Claimant did not assert or show that EAB Decisions 2018-EAB-0769 and 2018-EAB-0781, dismissing her requests for hearing, contained any error of material fact or law, or was inconsistent with any Department rule, officially stated Department position or prior Department practices. EAB Decisions 2018-EAB-0769 and 2018-EAB-0781 therefore are therefore adhered to on reconsideration.

DECISION: Request for reconsideration granted. EAB Decisions 2018-EAB-0769 and 2018-EAB-0781 are adhered to on reconsideration. Order Nos. 18-UI-113450 and 18-UI-113448 are affirmed.

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

DATE of Service: August 31, 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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