

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0825-R

Requests for Reconsideration Dismissed

PROCEDURAL HISTORY: On March 8, 2018, the Oregon Employment Department (the Department) served notice of administrative decision # 71048 concluding that claimant was not available for work from December 24 through 30, 2017; administrative decision # 74422 concluding that the employer suspended claimant for misconduct; and administrative decision # 81117 concluding that claimant quit working for the employer without good cause. Claimant filed timely requests for hearings. On April 4, 2018, the Office of Administrative Hearings (OAH) served notice of hearings scheduled for April 19, 2018. On April 19, 2018, claimant failed to appear at the hearings, and ALJ Griffin issued Orders No. 18-UI-107700, 18-UI-107713 and 18-UI-107714, dismissing claimant's requests for hearings due to his failure to appear. On May 9, 2018, Orders No. 18-UI-107700, 18-UI-107713 and 18-UI-107714 became final without claimant having requested to reopen the hearings.

On May 23, 2018, the Department served notice of administrative decision # 164825 concluding that claimant was overpaid \$837 in benefits that she must repay the Department. Claimant filed a timely request for hearing. On June 13, 2018, OAH served notice of a hearing scheduled for June 26, 2018. On June 26, 2018, claimant failed to appear at the hearing, and ALJ Scott issued Order No. 18-UI-112085, dismissing claimant's request for hearing due to her failure to appear. On July 16, 2018, Order No. 18-UI-112085 became final without claimant having filed a request to reopen the hearing.

On August 3, 2018, claimant filed late requests to reopen the April 19, 2018 and June 26, 2018 hearings. ALJ Kangas reviewed claimant's requests, and on August 8, 2018 issued Orders No. 18-UI-114561, 18-UI-114564, 18-UI-114565 and 18-UI-114566, denying the requests. On August 20, 2018, claimant filed applications for review of Orders No. 18-UI-114561, 18-UI-114564, 18-UI-114565 and 18-UI-114566 with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 18-UI-114561, 18-UI-114564, 18-UI-114565 and 18-UI-114566. For case-tracking purposes, the decision was issued in quadruplicate (EAB Decisions 2018-EAB-0824, 2018-EAB-0825, 2018-EAB-0826 and 2018-EAB-0827).

On August 30, 2018, EAB issued EAB Decisions 2018-EAB-0824, 2018-EAB-0825, 2018-EAB-0826 and 2018-EAB-0827, affirming Orders No. 18-UI-114561, 18-UI-114564, 18-UI-114565 and 18-UI-

114566. On October 1, 2018, EAB Decisions 2018-EAB-0824, 2018-EAB-0825, 2018-EAB-0826 and 2018-EAB-0827 became final without claimant having requests for reconsideration with EAB or filed petitions for judicial review with the Oregon Court of Appeals. On October 12, 2018, claimant filed late requests for reconsideration with EAB. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of claimant's requests for reconsideration. For case-tracking purposes, this decision is being issued in quadruplicate (EAB Decisions 2018-EAB-0824-R, 2018-EAB-0825-R, 2018-EAB-0826-R and 2018-EAB-0827-R).

CONCLUSIONS AND REASONS: Claimant's late requests for reconsideration are dismissed.

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). However, a request for reconsideration is subject to dismissal if filed more than 20 days from the date on which the EAB decision was mailed. OAR 471-041-0145(2)(b). Here, the EAB decisions at issue were mailed on August 30, 2018. To be timely, claimant's requests for reconsideration had to be filed by September 19, 2018. Her requests for reconsideration were filed with EAB on October 12, 2018, which was 23 days late. Claimant's requests for reconsideration therefore are dismissed.

In her requests for reconsideration, claimant asserts that she initially mailed the requests to the Oregon Judicial Department on September 20, 2018. However, claimant did not initially file her requests with EAB, any office of the Department or any Employment Security Agency in any other state or jurisdiction where she is claiming benefits, as required.¹ And even if she had, her requests for reconsideration nevertheless would have been one day late, and therefore dismissed. Nor does claimant appear to have met the deadline for filing petitions for judicial review of EAB Decisions 2018-EAB-0824, 2018-EAB-0825, 2018-EAB-0826 and 2018-EAB-0827 with the Oregon Court of Appeals.

DECISION: The requests for reconsideration filed October 12, 2018 are dismissed. EAB Decisions 2018-EAB-0824, 2018-EAB-0825, 2018-EAB-0826 and 2018-EAB-0827 remain undisturbed.

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

DATE of Service: October 22, 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.

¹ *See accord* OAR 471-041-0060(2) (January 8, 2008) (An application for review may be filed in person, by mail or by fax to EAB, or any office of the Employment Department, or any Employment Security Agency in any other state or jurisdiction where a party is claiming benefits.)

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