

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0850-R

Request for Reconsideration Dismissed

PROCEDURAL HISTORY: On November 8, 2012, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 94013). On November 28, 2012, decision # 94013 became final without claimant having filed a timely request for hearing. On approximately March 25, 2016 or July 10, 2018, claimant filed a late request for hearing. On July 12, 2018, ALJ Kangas issued Order No. 18-UI-113031, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by July 26, 2018. On July 25, 2018, claimant responded to the appellant questionnaire. On July 26, 2018, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 18-UI-113031 was canceled. On July 31, 2018, OAH mailed notice of a hearing scheduled for August 14, 2018. On August 14, 2018, ALJ Amesbury conducted a hearing, and on August 16, 2018 issued Order No. 18-UI-115046, dismissing claimant's late request for hearing. On August 28, 2018, claimant filed an application for review with the Employment Appeals Board (EAB). On September 14, 2018, EAB issued Appeals Board Decision 2018-EAB-0850, affirming the dismissal of claimant's late request for hearing. On September 27, 2018, claimant filed a request for reconsideration with EAB. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is dismissed.

Under OAR 471-041-0145(1) parties may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, position, or prior practices. However, such requests are subject to dismissal if they do not comply with the administrative rule requirement that all requests for reconsideration must include a statement that a copy of the request was provided to the other parties. *See* OAR 471-041-0145(2)(a). Claimant's request did not include such a statement, and it is therefore dismissed.

Even if we had not dismissed claimant's request for reconsideration, claimant's request would be denied because the request does not claim that EAB erred or that the decision to dismiss his late request for hearing was inconsistent with the Department's rules, position, or prior practices. Rather, claimant's request was based on his lack of understanding of the effects of decision # 94013. That is not a valid reason under Oregon law to allow reconsideration, and his request would have been denied.

By way of responding to claimant's request for an explanation about why his benefits were "cancel[ed] out" and he has "to pay the whole benefit back," decision # 94013 found that claimant was disqualified from receiving benefits because of his work separation from Astoria Pacific Seafood, LLC. The legal effect of that decision is that from July 8, 2012 until he requalified for benefits, claimant was disqualified from all benefits. It does not matter how long claimant worked for Astoria Pacific Seafood, LLC or how steady the work was. Regardless if he worked there for one minute or ten years, a disqualifying work separation would still have had the same effect of "canceling out" his benefits until he requalified for benefits. The reason that claimant's Astoria Pacific Seafood, LLC work separation "canceled out" his benefits is that Oregon law says it must. *See* ORS 657.155(1)(e) and ORS 657.176(2)(c). Because those laws apply to claimant, from July 8, 2012 and lasting until claimant requalified for benefits, no benefits were payable to him, and any benefits that were paid to him by mistake during those weeks must be repaid to the Employment Department. Because there is a potential overpayment decision related to this matter, we have referred claimant's September 27th letter to the Department for review. If claimant has any further questions about his overpayment or repayment of it, or if he would like to request a hearing about the overpayment, he must contact the Department directly.

DECISION: Claimant's request for reconsideration is dismissed. Appeals Board Decision 2018-EAB-0850-R, affirming Order No. 18-UI-115046, remains undisturbed.

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

DATE of Service: October 12, 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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