

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0908

Affirmed
Late Request for Hearing Dismissed
Overpayment Assessed

PROCEDURAL HISTORY: On May 22, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from April 1, 2018 through May 5, 2018 (decision # 153632). On June 11, 2018, decision # 153632 became final without claimant having filed a timely request for hearing. On July 24, 2018, the Department served notice of another administrative decision, based on decision # 153632, assessing a \$282.00 overpayment, that claimant was required to repay (decision # 124138). On July 27, 2018, claimant filed a late request for hearing on decision # 153632 and a timely request for hearing on decision # 124138. On August 1, 2018, ALJ Kangas issued Order No. 18-UI-114191, dismissing claimant's request for hearing on decision # 153632 as untimely without a showing of good cause subject to her right to renew the request by responding to an appellant questionnaire by August 15, 2018. On August 8, 2018, claimant filed a timely response to the appellant questionnaire. On August 13, 2018, the Office of Administrative Hearings (OAH) cancelled Order No. 18-UI-114191, and on August 16, 2018 scheduled a hearing for August 28, 2018 on decision # 153632. On August 21, 2018, OAH scheduled a hearing for August 28, 2018 on decision # 124138. On August 28, 2018, ALJ Shoemake conducted hearings and on September 4, 2018 issued Order No. 18-UI-115968 dismissing claimant's late request for hearing on decision # 153632, and Order No. 18-UI-15974 affirming decision # 124138. On September 18, 2018, claimant filed applications for review of both Orders with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order 18-UI-115968 and Order No. 18-UI-15974. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0907 and 2018-EAB-0908).

Claimant submitted written argument to EAB. Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision, and considered claimant's argument to the extent it was based on

the record. Even if we had considered the new information contained in claimant's written argument, however, our decision would remain the same.

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

DECISION: Orders No. 18-UI-115968 and 18-UI-115974 are affirmed.

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

DATE of Service: September 21, 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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