

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0996-R

Late Request for Reconsideration Dismissed

PROCEDURAL HISTORY: On May 25, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from April 29, 2018 through May 19, 2018 (decision # 155830). Claimant filed a timely request for hearing. On June 6, 2018, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for June 20, 2018. On June 20, 2018, claimant failed to appear at the hearing, and ALJ Frank issued Order No. 18-UI-111680, dismissing claimant's request for hearing because he failed to appear. On August 18, 2018, claimant filed a request to reopen the hearing. ALJ Kangas considered claimant's request, and on September 27, 2018 issued Order No. 18-UI-117337 denying the request. On October 12, 2018, claimant filed an application for review with the Employment Appeals Board (EAB). On October 23, 2018, EAB issued Appeals Board Decision 2018-EAB-0996, affirming the ALJ's decision. On November 19, 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 late, and is therefore subject to dismissal.

Under ORS 657.290(3) and OAR 471-041-0145 parties may request that EAB reconsider a prior decision, for example, to correct an error of material fact or law. OAR 471-041-0145(2)(b) provides that such a request is subject to dismissal unless it is filed on or before the 20th day after the decision sought to be reviewed is mailed. The EAB decision claimant sought to have reconsidered was mailed on October 23, 2018. The 20th day after October 23, 2018 is November 12, 2018. To be timely, claimant's request for reconsideration therefore had to have been filed on or before November 12, 2018. Claimant filed his request on November 19th. Claimant's request was late, and is therefore dismissed.

Even if claimant had timely filed his request for reconsideration, the outcome of this case would have remained the same. Claimant alleged that EAB erred in the procedural history of Appeals Board

Decision 2018-EAB-0996 by stating that “claimant was not available for work from April 29, 2018 through May 19, 2018,” asserting that that sentence was not correct because he did consider himself available for work. Claimant misstated the EAB sentence, which actually stated, “On May 25, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from April 29, 2018 through May 19, 2018 (decision # 155830).” That sentence was an accurate statement about the contents of the Department’s May 25, 2018 decision. EAB therefore did not err in so stating. It is apparent that what claimant is trying to dispute is actually the factual basis underlying that Department decision. However, claimant lost his right to do so when he failed to appear at the June 20th hearing about decision # 155830 without good cause. Claimant therefore no longer has the right to dispute whether or not he was available for work during the designated period, and EAB’s decision to that effect was not in error.

DECISION: The request for reconsideration filed November 19, 2018 is dismissed. EAB Decision 2018-EAB-0996 remains undisturbed.

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

DATE of Service: November 29, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.