

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0085

*Applications for Review Dismissed on
Hearing Decisions 13-UI-07059, 13-UI-07063, 13-UI-07064, 13-UI-07068
Overpayment*

PROCEDURAL HISTORY: On August 9, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from July 14, 2013 to July 20, 2013 (decision # 75300). On August 29, 2013, decision # 75300 became final without a request for hearing having been filed. On October 1, 2013, the Department served notice of administrative decision (decision # 065325) assessing a \$467 overpayment in Emergency Unemployment Insurance Benefits (EUC) based on decision # 75300. On October 21, 2013, claimant filed a request for hearing with respect to decision # 75300 and # 065325.

On November 1, 2013, the Department served 10 notices of 10 administrative decisions concluding claimant was not available for work from May 26, 2013 to June 1, 2013 (decision # 85432), June 2, 2013, to June 8, 2013 (decision # 90256), June 9, 2013 to June 15, 2013 (decision # 90813), June 16, 2013 to June 22, 2013 (decision # 91450), June 23, 2013 to June 29, 2013 (decision # 92102), June 30, 2013 to July 6, 2013 (decision # 92841), July 7, 2013 to July 13, 2013 (decision # 93352), July 21, 2013 to July 27, 2013 (decision # 93942), July 28, 2013 to August 3, 2013 (decision # 94612), August 4, 2013 to August 10, 2013 (decision # 95110). On November 18, 2013, claimant filed a request for hearing on the availability decisions.

On December 10, 2013, ALJ Menegat conducted a hearing with respect to decision # 75300. On December 18, 2013, ALJ Menegat conducted a hearing on the availability decisions. On December 18, 2013, and rescheduled to December 20, 2013, ALJ Menegat conducted a hearing with respect to decision # 065325, concerning the overpayment.

On December 23, 2013, ALJ Menegat issued the following Hearing Decisions: 13-UI-07068, dismissing claimant's late request for hearing with respect to decision # 75300; 13-UI-07057, concluding claimant

was available for work from June 2, 2013 to June 8, 2013; 13-UI-07059, affirming decision #90813; 13-UI-07060, concluding claimant was available for work from June 16, 2013 to June 22, 2013; 13-UI-07061, concluding claimant was available for work from June 23, 2013 to June 29, 2013; 13-UI-07062 concluding claimant was available for work from June 30, 2013 to July 6, 2013; 13-UI-07063, affirming decision #93352; 13-UI-07064, affirming decision # 93942; 13-UI-07065, concluding claimant was available for work from July 28, 2013 to August 3, 2013; 13-UI-07066, concluding claimant was available for work from August 4, 2013 to August 10, 2013; and 13-UI-07067, concluding claimant was available for work from May 26, 2013 to June 1, 2013.

On December 27, 2013, ALJ Menegat issued Hearing Decision 13-UI-07202, affirming decision # 065325.

On January 13, 2014, Hearing Decisions 13-UI-07059, 13-UI-07063, 13-UI-07064 and 13-UI-07068 became final without applications for review having been filed.

On January 14, 2013, claimant filed by facsimile applications for review of Hearing Decisions 13-UI-07059, 13-UI-07063, 13-UI-07064, 13-UI-07068, and 13-UI-07202.

CONCLUSIONS AND REASONS: Claimant did not establish good cause to file untimely applications for review of Hearing Decisions 13-UI-07059, 13-UI-07063, 13-UI-07064 and 13-UI-07068, and her applications for review should be dismissed.

ORS 657.270(4) required claimant's applications for review of Hearing Decisions 13-UI-07059, 13-UI-07063, 13-UI-07064 and 13-UI-07068 to be filed no later 5:00 p.m., Pacific Standard Time on January 13, 2014; they were filed on January 14, 2014, as shown by the receipt date stamped on the documents. OAR 471-041-0065(1)(c) (October 29, 2006) (faxed document received after 5:00 p.m. are marked as received the following business day; the filing date of applications for review filed by fax is the receipt date stamped or written on the fax transmission by the public employee who received the document). OAR 471-041-0070(3) requires that individuals filing late applications for review include with the late application "a written statement describing the circumstances that prevented a timely filing." Claimant did not provide any explanation as to why she filed her applications of Hearing Decisions 13-UI-07059, 13-UI-07063, 13-UI-07064 and 13-UI-07068 one day after the filing deadline expired.

Because the applications for review of Hearing Decisions 13-UI-07059, 13-UI-07063, 13-UI-07064 and 13-UI-07068 were filed after the 20-day deadline provided by ORS 657.270(4), and good cause to extend the time allowed has not been shown, the applications for review must be dismissed.

EAB reviewed the entire hearing record with respect to Hearing Decision 13-UI-07202. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: The applications for review filed January 14, 2014 of Hearing Decisions 13-UI-07059, 13-UI-07063, 13-UI-07064 and 13-UI-07068 are dismissed and remain undisturbed. Hearing Decision 13-UI-07202 is affirmed.

Susan Rossiter and Tony Corcoran;
D. E. Larson, not participating.

DATE of Service: January 24, 2014

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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.