

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0929

### *Application for Review Dismissed*

**PROCEDURAL HISTORY:** On October 23, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from April 23, 2013, through October 19, 2013 (decision # 115207). On November 12, 2013, decision # 115207 became final without a request for a hearing having been filed. On February 19, 2014, the Department issued a decision (decision # 83310) assessing a \$11,539 overpayment based on decision # 115207. Claimant filed a timely request for hearing. On April 2, 2014, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for April 22, 2014. On April 22, 2014, ALJ Frank conducted a hearing, and on April 30, 2014, issued Hearing Decision 14-UI-16498, affirming decision # 83310. Hearing Decision 14-UI-16498 became final on May 20, 2014, without an application for review having been filed. On May 28, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Claimant did not establish good cause to file an untimely application for review, and her application for review should be dismissed.

ORS 657.270(4) required claimant's application for review to be filed no later than May 20, 2014; it was filed on May 28, 2014, as shown by the receipt date stamped on the fax transmission. OAR 471-041-0065(1)(c) (October 29, 2006) (if faxed, the filing date is the receipt date stamped or written on the fax transmission by the public employee who receives the document). The period for filing an application for review may be extended if good cause is shown for the extension; good cause exists if an individual provides evidence that factors or circumstances beyond the individual's reasonable control prevented a timely filing. In written argument, the claimant's attorney notes that claimant received two hearing

notices – one for an April 22 hearing and one for a May 15 hearing<sup>1</sup>. Claimant’s attorney contends that claimant did not file a timely appeal of Hearing Decision 14-UI-16498 because “she understood the May 15, 2014 hearing...to be a continuation of the same issues addressed at the April 22, 2014 hearing.”

The notice claimant received for the April 22 hearing states that issue to be considered is “[w]hether claimant was paid benefits to which claimant was not entitled and is liable to repay such amount or is liable to have such amount deducted from benefits payable.” The notice claimant received for the May 15 hearing states that the issues to be considered are “[w]as claimant unemployed, registered for work, able to work, available for work and actively seeking and unable to obtain suitable work?” and “[w]as the request for hearing filed within the 20-day time limit; and, if not, is there good cause for extending the limit a reasonable time?” (EAB Exhibit 1). It was well within claimant’s reasonable control to carefully read both hearing notices and understand that the issues to be considered at the May 15 hearing were different from those considered at the April 22 hearing. Claimant has, therefore, failed to demonstrate that circumstances beyond her reasonable control prevented her from filing a timely application for review of Hearing Decision 14-UI-16498.

**DECISION:** The application for review filed May 28, 2014 is dismissed. Hearing Decision 14-UI-16498 remains undisturbed.

Susan Rossiter and Tony Corcoran;  
J. S. Cromwell, not participating.

**DATE of Service:** June 6, 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.

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<sup>1</sup> We admit the notice of the May 15 hearing into evidence in this case as EAB Exhibit 1. OAR 471-041-0090(2) (October 29, 2006). A copy of Exhibit 1 is attached to this decision. Any party that objects to our admission of this exhibit may submit such objection to this office in writing, setting forth the basis of the objection, within ten days of the date on which this decision is mailed. Unless an objection is received and sustained, the exhibit will remain part of the record.