

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1163

Affirmed
Late Request for Hearing Dismissed
Overpayment

PROCEDURAL HISTORY: On May 1, 2014¹, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 154327). On May 15, 2014, the Department served notice of an administrative decision (decision # 194539) assessing a \$1,164 overpayment, \$124.60 in monetary penalties, and 9 penalty weeks based on decision # 154327. On May 20, 2014, decision # 154327 became final without a request for hearing having been filed. On May 22, 2014, claimant filed a timely request for hearing on decision # 194539 and a late request for hearing on decision # 154327.

On May 28, 2014, the Office of Administrative Hearings (OAH) issued two notices of two hearings scheduled for June 13, 2014, one at 9:30 a.m. and one at 10:45 a.m. On June 13, 2014, ALJ Vincent conducted two hearings and on June 20, 2014, issued Hearing Decision 14-UI-20081, dismissing claimant's late request for hearing on decision # 154327, and Hearing Decision 14-UI-20078, modifying the Department's decision # 194539 and assessing a \$1,164 overpayment without penalties. On July 7, 2014, claimant filed applications for review with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 14-UI-20081 and 14-UI-20078. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2014-EAB-1163 and 2014-EAB-1164).

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decisions under review are **adopted**.

¹The ALJ incorrectly identified May 21, 2014 as the date the Department mailed administrative decision # 154327. During the June 13, 2014 hearing, the Department's authorized representative testified that May 1, 2014 was the most likely date the decision was mailed. This would still make claimant's May 22, 2014 request for hearing one day late and does not change the outcome of Hearing Decision 14-UI-20081.

DECISION: Hearing Decisions 14-UI-20081 and 14-UI-20078 are affirmed.

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

DATE of Service: August 12, 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 court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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.