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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1592-R

Request for Reconsideration Denied

PROCEDURAL HISTORY: On March 13, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 124055) concluding that claimant was not available for work from February 16, 2014 through March 8, 2014 (weeks 8-14 through 10-14). Claimant filed a timely request for hearing. On March 31, 2014, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for April 14, 2014 at 1:30 p.m. On April 14, 2014, ALJ Lohr issued Hearing Decision 14-UI-15111, dismissing claimant's request for hearing for failure to appear. On May 4, 2014, Hearing Decision 14-UI-15111 became final without a request to reopen or application for review having been filed.

On May 14, 2014, the Department issued the following administrative decisions: decision #100751, concluding that claimant was not available for work from May 4, 2014 through May 10, 2014 (week 19-14); and decision #92550, concluding that claimant was not available for work from March 9, 2014 through May 10, 2014 (weeks 11-14 through 19-14). Claimant filed timely requests for hearing on both decisions. On June 11, 2014 ALJ S. Lee held hearings, and on June 13, 2014, issued the following hearing decisions: Hearing Decision 14-UI-19669, concluding that claimant was not available for work from March 9 through May 3, 2014 (weeks 11-14 through 18-14); and Hearing Decision 14-UI-19671, concluding that claimant was not available for work from May 4, 2014 through June 7, 2014 (weeks 19-14 through 23-14).

On May 19, 2014, the Department served notice of an administrative decision (decision #130522) concluding that claimant voluntarily left work without good cause. On June 9, 2014, decision # 130522 became final without a request for hearing having been filed.

On July 1, 2014, the Department served notice of an administrative decision (decision #85647) assessing a \$1,479 overpayment for the weeks of February 16, 2014 through March 8, 2014 (weeks 8-14 through 10-14) based on decision #124055. On July 21, 2014, decision # 85647 became final without a request for hearing having been filed.

On July 22, 2014, the Department served notice of an administrative decision (decision #131216) assessing a \$4,459 overpayment for the period March 9, 2014 through May 10, 2014 (weeks 11-14 through 19-14) based on Hearing Decisions 14-UI-19669 and 14-UI-19671.

On August 1, 2014, the Department served notice of an administrative decision (decision #110754) that assessed a \$2,953 overpayment for the period January 5, 2014 through March 8, 2014 (weeks 02-14 through 10-14) based on administrative decision 130522.

On August 7, 2014, claimant filed late requests for hearing on decisions # 130522 and # 85647, and timely requests for hearing on decisions # 131216 and # 110754.

On September 2, 2014, the Office of Administrative Hearings (OAH) issued four notices of two hearings scheduled for September 16, 2014 – one at 9:30 a.m. and the other at 10:45 a.m. On September 16, 2014, ALJ Lohr conducted two hearings, and on September 17, 2014 issued Hearing Decisions 14-UI-25328, dismissing claimant's request for hearing on decision # 130522 as untimely, and 14-UI-25329, dismissing claimant's request for hearing on decision # 85647 as untimely. On September 18, 2014, ALJ Lohr issued Hearing Decisions 14-UI-25415 and 14-UI-25413, affirming the Department's decisions # 110754 and # 131216. On October 2, 2014, claimant filed applications for review on Hearing Decisions 14-UI-25328, 14-UI-25329, 14-UI-25415 and 14-UI-25413.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 14-UI-25328, 14-UI-25329, 14-UI-25415 and 14-UI-25413. For case-tracking purposes, these decisions were issued in quadruplicate. (EAB Decisions 1592, 1593, 1594 and 1595).

On October 24, 2014, claimant submitted a letter regarding the above decisions to EAB. Claimant's letter is treated as a request to have EAB reconsider these decisions.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its reconsideration of Appeals Board Decisions 2014-EAB-1592, 2014-EAB-1593, 2014-EAB-1594 and 2014-EAB-1595. For case-tracking purposes, these decisions were issued in quadruplicate. (EAB Decisions 1592-R, 1593-R, 1594-R and 1595-R).

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is denied.

In her letter, claimant included information that was not part of the hearing record. Under OAR 471-041-0090 (October 29, 2006), EAB may consider information not included in the hearing record if the party offering the information shows that circumstances beyond the party's reasonable control prevented the party from presenting the information at hearing. Claimant provided no explanation as to why the information in the letter was not presented at hearing.

OAR 471-041-0145(1) (October 29, 2006), provides, in relevant part, that a party may request reconsideration of an EAB decision "to correct an error of material fact or law." In her October 24, 2014 letter, claimant asserted: "The overpayment also includes decision # 130522 which I did appeal that states that I voluntarily left work without good cause, which I also appealed untimely due to confusion

with the numerous decisions and appeals. I was unaware what it meant and what the outcome would be for the Judge to take jurisdiction over these weeks if I were to lose the appeal. I would not have agreed to this if I had the proper knowledge, nor do I believe it was the moral thing for any person to request given that I was only unavailable for work on one day, March 6, 2011(sic).”

With regard to claimant’s late request for hearing on the administrative decision that concluded claimant voluntarily left work without good cause, Hearing Decision 14-UI-25328 found that “claimant has not shown that her two month delay to appeal the May 19, 2014 decision was due to excusable mistake or circumstances beyond her reasonable control.” Because claimant had not shown good cause for an extension of the appeal period, the ALJ had no authority to consider the merits of the administrative decision.

With regard to the ALJ taking jurisdiction over the weeks for which claimant claimed benefits but which were not covered in the administrative decision, this is commonly done in administrative hearings to simplify the proceedings by considering all the weeks for which claimant claimed benefits in one hearing, instead of having multiple hearings on the same issue. The ALJ’s action in taking jurisdiction over additional weeks did not prejudice claimant’s rights.

Accordingly, claimant failed to demonstrate that EAB made any error of fact or law in Appeals Board Decisions 2014-EAB-1592, 2014-EAB-1593, 2014-EAB-1594 and 2014-EAB-1595 that requires correction.

DECISION: Claimant’s request for reconsideration is denied. Appeals Board Decisions 2014-EAB-1592, 2014-EAB-1593, 2014-EAB-1594 and 2014-EAB-1595 remain undisturbed.

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

DATE of Service: October 30, 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.

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