

**EMPLOYMENT APPEALS BOARD DECISION**  
**2014-EAB-1927**

*Affirmed*  
*Late Request for Hearing Dismissed*  
*Overpayment and Penalties*

**PROCEDURAL HISTORY:** On May 12, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 195571) concluding claimant willfully made a misrepresentation to obtain benefits, and assessing a \$2,977 overpayment, \$446.55 in monetary penalties and 25 penalty weeks due to unreported income. On June 2, 2014, administrative decision # 195571 became final without a request for hearing having been filed. On September 30, 2014, claimant filed a late request for hearing. On October 16, 2014, ALJ Kangas issued Hearing Decision 14-UI-27018, dismissing claimant's request for hearing as untimely, subject to claimant's "right to renew" the request by submitting responses to the "Appellant Questionnaire" attached to the hearing decision within 14 days of the date the decision was mailed.<sup>1</sup> On October 27, 2014, the Office of Administrative Hearings (OAH) received claimant's response. On October 30, 2014, OAH issued a "Cancellation of Hearing Decision" for Hearing Decision 14-UI-27018. On December 9, 2014, ALJ Frank conducted a hearing, and on December 11, 2014 issued Hearing Decision 14-UI-30227, re-dismissing claimant's request for hearing. On December 21, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

<sup>1</sup> Hearing Decision 14-UI-27018

EAB considered claimant's written argument to the extent it was relevant and based on the hearing record. Claimant first complained that the ALJ focused on the timeliness of his request for hearing instead of adjudicating misrepresentation issue. ORS 657.270 requires that individuals filing requests for hearing do so within 20 days of the date the administrative decision was mailed. ORS 657.875 allows the 20-day time limit to be extended only upon a showing of good cause, which is defined in OAR 471-040-0010 to include excusable mistakes and factors beyond the individual's reasonable control. Unless the party filing a late request for hearing shows good cause to extend the filing period, the original administrative decision becomes final, and cannot be adjudicated at any subsequent hearing. Because claimant's request was filed late, the ALJ did not err by focusing on the timeliness issue.

Claimant claimed he filed a request for hearing in this matter, and, in support, provided a handwritten letter dated May 5, 2014 in which he argued that he had not made any intentional misrepresentations to the Department. The letter to which claimant referred is in evidence. However, because it pre-dates the administrative decision at issue, it cannot be construed as a request for hearing on the misrepresentation decision at issue in this case. Claimant admitted he did not send any other pieces of correspondence about this matter until September 2014. Claimant did not file a timely request for hearing. Nor did claimant show good cause for filing a late request for hearing. Claimant attributed his failure to file a timely request for hearing to his failure to understand the system. However, OAR 471-040-0010(1)(b)(B) specifically provides that "good cause" does not include failing to understand the implications of a decision when it is received. Therefore, claimant's failure to understand the decision, the penalty being assessed, the laws governing overpayments, or even the filing deadlines associated with requesting a hearing on the administrative decision in this case, do not constitute good cause for the late filing. Thus, the ALJ did not err by concluding that claimant did not show good cause for filing a late request for hearing.

Finally, claimant expressed confusion over the penalties the Department assessed in this case. The length of claimant's penalty is not before EAB on review, because claimant did not file a timely request for hearing on this decision. We have not reviewed any evidence about the penalty, nor should this decision be construed as rendering a decision about the penalty. However, we have chosen to respond to claimant's request for information *for the sole purpose* of helping claimant to understand the reason for his penalty, as follows:

The assessment of misrepresentation penalties, like in this case, is not discretionary. That means the Department has to follow specific laws and rules that govern how long a penalty to impose in each case, or how large a monetary penalty to impose.

ORS 657.215 allows the Department to assess up to 52 penalty weeks in cases of misrepresentation. The number of penalty weeks assessed is calculated according to OAR 471-030-0052. That rule provides that where, as the Department determined here, the claimant has been overpaid because he failed to accurately report work and/or earnings, the number of weeks of disqualification imposed is calculated by determining the total amount of benefits overpaid to the individual for the disqualifying act(s), dividing that number by the maximum Oregon weekly benefit amount in effect during the first effective week of the initial claim in effect at the time of the individual's disqualifying act(s), rounding off to the nearest two decimal places, multiplying the result by four, then rounding up to the nearest whole number. OAR 471-030-0052(1)(a). Information on claimant's total overpayment amount and the maximum Oregon weekly benefit amounts in effects in claimant's claims can be found on the schedule

of adjustments the Department attached to the overpayment misrepresentation decision. In this case, the record shows that the total number of weeks the Department reached by applying that formula to claimant's overpayment was 25 weeks.

ORS 657.310(2) also requires the Department to assess a 15 to 30 percent monetary penalty in cases of misrepresentation. The percentage is based upon the number of occurrences of misrepresentation in the individual's case, as defined in OAR 471-030-0052(7). The total monetary penalty is calculated by multiplying the total overpayment by the applicable percentage. In this case, the Department determined that claimant's total overpayment was \$2,977. The Department determined that the applicable percentage based on the number of misrepresentation occurrences in claimant's case was 15 percent. Multiplying those figures, the Department then calculated that claimant's total monetary penalty, equal to 15 percent of \$2,977, is \$466.55.

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

**DECISION:** Hearing Decision 14-UI-30227 is affirmed.

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

**DATE of Service:** January 6, 2015

**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](http://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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