

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1953-R

Request for Reconsideration Dismissed

PROCEDURAL HISTORY: On June 25, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 94418) concluding claimant voluntarily quit work for Beth Earnest & Associates without good cause on September 16, 2013. On July 15, 2014, administrative decision # 94418 became final without a request for hearing having been filed. On August 1, 2014, the Department served notice of an administrative decision (decision # 105511), assessing a \$11,075 overpayment based on decision # 94418. On August 8, 2014, claimant filed a late request for hearing on decision # 94418. On August 15, 2014, ALJ Kangas issued Hearing Decision 14-UI-23448, 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.¹ On August 29, 2014, the Office of Administrative Hearings (OAH) received claimant's response. On October 3, 2014, ALJ S. Lee conducted a hearing, and on October 9, 2014 issued Hearing Decision 14-UI-26657, affirming the Department's decision # 94418.² On October 29, 2014, Hearing Decision 14-UI-26657 became final without an application for review having been filed.

On August 21, 2014, administrative decision # 105511 became final without a request for hearing having been filed. On August 29, 2014 claimant filed a late request for hearing on decision # 105511. On September 9, 2014, ALJ Kangas issued Hearing Decision 14-UI-24833, dismissing claimant's request for hearing as untimely, subject to claimant's "right to renew" the request by submitting

¹ Hearing Decision 14-UI-23448.

² A copy of Hearing Decision 14-UI-26657 is marked as EAB Exhibit 1. A copy of EAB Exhibit 1 is included with this decision. Any party that objects to the admission of EAB Exhibit 1 must submit its objection in writing, explaining the basis for the objection, within 10 days of the date on which this decision was mailed. Unless such an objection is received, EAB Exhibit 1 will remain part of the record.

responses to the “Appellant Questionnaire” attached to the hearing decision within 14 days of the date the decision was mailed.³ On September 11, 2014, the Office of Administrative Hearings (OAH) received claimant’s response. On September 18, 2014 and on October 20, 2014, OAH issued a “Cancellation of Hearing Decision” for Hearing Decision 14-UI-24833. On December 1, 2014,⁴ ALJ S. Lee conducted a hearing.

On December 8, 2014, ALJ S. Lee issued Hearing Decision 14-UI-30035. In the “Conclusions of Law” section of Hearing Decision 14-UI-30035, the ALJ stated that the request for hearing was timely filed and that claimant was paid benefits to which he was not entitled; in the “Order” section of that decision, the ALJ affirmed decision # 105511, but stated that “[t]he Employment Department did not overpay claimant unemployment benefits.”

On December 10, 2014, ALJ S. Lee issued Amended Hearing Decision 14-UI-30171 to correct a typographical error in Hearing Decision 14-UI-30035. The only major change from the prior hearing decision was made in the “Order” section of Hearing Decision 14-UI-3017; in that section, the ALJ affirmed decision # 105511, and stated that “[t]he Employment Department **overpaid** claimant unemployment benefits.” (Emphasis in the original, to show language added to the decision).

On December 24, 2014, ALJ S. Lee issued Amended Hearing Decision 14-UI-30972. The only major change from the prior hearing decisions was made in “Order” section of Hearing Decision 14-UI-30972; in that section, the ALJ affirmed decision # 105511, and stated that “[t]he Employment Department **overpaid** claimant unemployment benefits **which must be repaid or withheld from future benefits.**” (Emphasis in the original, to show language added to the decision).

On December 29, 2014, claimant filed an application for review of Hearing Decision 14-UI-30972 with the Employment Appeals Board (EAB). On January 7, 2015, EAB issued Appeals Board Decision 2014-EAB-1953, affirming the hearing decision under review.

On January 27, 2015, submitted a letter to EAB which he described as “my last chance to highlight the flaws and inconsistencies within and in-between the Employment Department and the Office of Administrative Hearings.” Based on claimant’s letter, EAB will exercise its authority under ORS 657.290(3) and reconsider Appeals Board Decision 2014-EAB-1953 on its own motion.

FINDINGS OF FACT: (1) On September 4, 2013, claimant filed an initial claim for benefits. His weekly benefit amount was \$443.

(2) When he claimed benefits for week 38-13 (September 15 through 21, 2013) claimant reported to the Department that he had not quit a job during that week.

(3) From September 15, 2013 through March 8, 2014 (weeks 38-13 through 10-14), the Department paid claimant \$443 per week in benefits. In total, the Department paid claimant \$11,075 in benefits.

³ Hearing Decision 14-UI-24833.

⁴ The hearing decisions incorrectly state that the hearing was held on November 13, 2014.

CONCLUSION AND REASONS: We agree with the ALJ that claimant was overpaid \$11,075 in benefits that he is liable to repay or have deducted from any future benefits otherwise payable to him under ORS chapter 657.

ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.*

Claimant received benefits for weeks 38-13 through 10-14 (September 15, 2013 through March 8, 2014) after he reported that he had not quit a job during week 38-13 (September 15 through 21, 2013). However, decision # 94418 concluded that claimant quit a job with Beth Earnest & Associates on September 16, 2013 without good cause. Hearing Decision 14-UI-26657 affirmed decision # 94418, and that hearing decision became final on October 29, 2013 because claimant failed to file an application for review. Thus, for purposes of his unemployment insurance claim, claimant quit a job as a matter of law. Regardless of claimant's knowledge or intent, his report to the Department that he did not quit a job during week 38-13 was false as a matter of law. Although claimant testified at hearing that he did not report he quit a job with Beth Earnest & Associates because he believed that he never worked for this employer (Audio at ~ 35:38), his false statement to the Department, for whatever reason, and his receipt of benefits to which he was not entitled, are sufficient to establish his repayment obligation. He is therefore liable to repay the \$11,075 in benefits he received for weeks 38-13 through 10-14, or have that amount deducted from any future benefits otherwise payable to him under ORS chapter 657.

DECISION: The request for reconsideration is granted. We adhere to Appeals Board Decision 2014-EAB-1953 as clarified herein.

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

DATE of Service: February 2, 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. 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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