

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0103

Affirmed
Late Request for Hearing Dismissed
Disqualification
Overpayment Assessed

PROCEDURAL HISTORY: On November 10, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 145409) concluding claimant was not available for work from August 3 to September 13, 2014 (weeks 32-14 to 37-14) and from October 5 to October 25, 2014 (weeks 41-14 to 43-14). On December 1, 2014, decision # 145409 became final without a request for hearing having been filed. On December 29, 2014, the Department served notice of an administrative decision (decision # 111601) assessing a \$1,240 overpayment based on decision # 145409. On December 31, 2014, claimant filed a late request for hearing on decision # 145409 and a timely request for hearing on decision # 111601.

On January 22, 2015, ALJ Frank conducted two hearings, and on January 30, 2015, issued Hearing Decision 15-UI-32618, dismissing claimant's request for hearing on decision # 145409 as untimely, and Hearing Decision 15-UI-32619, affirming decision # 111601. On February 3, 2015, 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 15-UI-32618 and 15-UI-32619. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-0102 and 2015-EAB-0103).

EAB considered claimant's written argument to the extent it was relevant and based on the hearing records. Claimant asserted that the hearing proceedings were unfair because the ALJ did not consider claimant's argument regarding the November 10, 2014 administrative decision. However, the ALJ did not err in failing to consider that issue because claimant's failure to file a timely request for hearing on that decision, or show good cause for filing a late request for hearing on it, meant that the ALJ did not have jurisdiction to consider that issue. We reviewed the hearing records in their entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair

hearing as required by ORS 657.270(3) and OAR 471-040-0025(1) (August 1, 2004). We considered claimant's remaining arguments when reaching this decision.

Claimant argued that, just prior to the issuance of the November 10, 2014 administrative decision, in a conversation with a Department representative, he was told he would probably be ineligible for future benefits, and not be expected to repay benefits previously received. However, as the ALJ pointed out in the first hearing, the plain language of the administrative decision says: "NOTICE: This decision results from information obtained after the original decision to pay or not pay benefits, and may create and overpayment if you were previously allowed benefits. If this decision becomes final, and you were overpaid benefits, you will be notified of the amount." It appears claimant filed a late request for hearing because he failed to understand the full implication of the decision. OAR 471-040-0010 (1)(b)(B) specifically provides that "good cause" does not include not understanding the implications of a decision when it is received. Thus, under that rule, claimant did not have good cause for the late request for hearing.

Claimant also argued that "A complete repayment by me, the claimant, would have meant that I was dishonest in my weekly claims." However, the Department did not accuse claimant of any fraud or misconduct as a result of these decisions and no monetary penalty or penalty weeks were assessed as a result of these decisions. The overpayment was written under ORS 657.310(1) which provides:

"If the Director of the Employment Department decides that an individual received any benefits under this chapter to which the individual is not entitled because the individual, **regardless of the individual's knowledge or intent**, made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, the individual is liable:

- (a) To repay the amount of the benefits to the director for the Unemployment Compensation Trust Fund; or
- (b) To have the amount of the benefits deducted from any future benefits otherwise payable to the individual under this chapter."

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

DECISION: Hearing Decisions 15-UI-32618 and 15-UI-32619 are affirmed.

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

DATE of Service: February 11, 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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