

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0582**

*Affirmed*  
*Not Available Weeks 45-14 to 52-14 and 9-15*  
*Overpayment and Penalties Assessed*

**PROCEDURAL HISTORY:** On March 13, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 133056) concluding claimant was not able to work from November 2 through December 27, 2014 (week 45-14 through week 52-14). On March 16, 2015, the Department served to additional notices of two administrative decisions, one concluding claimant was not available for work from November 2, 2014 through March 7, 2015 (week 45-14 through week 9-15) (decision # 140635), and the other concluding that claimant was overpaid benefits during those weeks and assessing a \$3,320 overpayment, \$996 monetary penalty and 25 penalty weeks (decision # 195460).

On March 31, 2015, claimant filed timely requests for hearing on decisions # 140635 and # 195460. On April 2, 2015, decision # 133056 became final without claimant having filed a request for hearing.<sup>1</sup> On April 22, 2015, ALJ R. Frank conducted two hearings on decisions # 140635 and # 195460. On April 29, 2015, the ALJ issued Hearing Decision 15-UI-37658, concluding claimant was not available for work from weeks 45-14 through 52-14 and week 9-15. On April 30, 2015, the ALJ issued Hearing Decision 15-UI-37757, affirming decision # 195460. On May 18, 2015, claimant filed applications for review of Hearing Decisions 15-UI-37658 and 15-UI-37757 with the Employment Appeals Board (EAB).

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<sup>1</sup> Decision # 133056, which concluded that claimant was not able to work from week 45-14 through 52-14, is final. Therefore, as a matter of law, claimant was not able to work during those weeks, and the issue of claimant's ability to work is not before EAB on review. However, because the weeks covered by decision # 133056 were, in part, a basis for concluding the Department overpaid claimant benefits, we have referenced decision # 133056 in the procedural history for contextual reasons. EAB has not reviewed any evidence or reached any independent conclusions concerning claimant's ability to work during the weeks at issue.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-37658 and 15-UI-37757. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-0580 and 2015-EAB-0582).

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 Decisions 15-UI-37658 and 15-UI-37757 are affirmed.

Susan Rossiter and J. S. Cromwell;  
D. H. Hettle, *pro tempore*, not participating.

**DATE of Service: June 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 Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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