

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1020

Adopted
No Overpayment Assessed
Penalty Weeks Assessed

PROCEDURAL HISTORY: On July 15, 2015, the Oregon Employment Department (Department) served notice of an administrative decision that concluded that claimant voluntarily left work without good cause (decision # 93535). On July 17, 2015, the Department served notice of an administrative decision (# 194645) that assessed a \$3,507 overpayment, 26 penalty weeks and a \$526.05 monetary penalty, based on decision # 93535. Claimant filed timely requests for hearing. On August 13, 2015, ALJ Vincent conducted hearings and on August 17, 2015, issued Hearing Decision 43083, reversing decision # 93535 and concluding that claimant voluntarily left work with good cause. On August 21, 2015, ALJ Vincent issued Hearing Decision 15-UI-43344, affirming decision # 194645, the overpayment decision. On August 25, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

On August 27, 2015, ALJ Vincent issued Hearing Decision 15-UI-43611 in which he amended Hearing Decision 15-UI-43344 by assessing four penalty weeks, but concluding that claimant was not overpaid unemployment benefits and was not liable for any monetary penalty.¹

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-43344 and 15-UI-43611. For case tracking purposes this decision is being issued in duplicate (Appeals Board Decisions 2015-EAB-1020 and 2015-EAB-1106).

CONCLUSION AND REASONS: By filing an application for review of Hearing Decision 15-UI-43344, claimant sought review of three issues: the assessment of a \$3,507 overpayment and a \$526.05

¹ Hearing Decision 15-UI-43344 is marked as EAB Exhibit 1. A copy of EAB Exhibit 1 is included with this decision. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of the date on which this decision is mailed. Unless such an objection is received, EAB Exhibit 1 will remain part of the record.

monetary penalty, and the imposition of 26 penalty weeks. Two of these issues were resolved in claimant's favor by Hearing Decision 15-UI-43611, which amended and superseded Hearing Decision 15-UI-43344. Hearing Decision 15-UI-43344 essentially is no longer valid and we therefore have no jurisdiction to review it. We conclude, however, that claimant wants review of the one remaining issue which was not resolved in his favor by Hearing Decision 15-UI-43611: the imposition of four penalty weeks. For this reason, we will construe claimant's application for review as expressing intent to appeal Hearing Decision 15-UI-43611.²

EAB reviewed the entire record in this case. On *de novo* review and pursuant to ORS 657.275(2), Hearing Decision 15-UI-43611 is **adopted**.

DECISION: Hearing Decision 15-UI-43344 is vacated. Hearing Decision 15-UI-43611 is affirmed, as outlined above.

Susan Rossiter and J. S. Cromwell

DATE of Service: September 18, 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. 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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² Under OAR 471-041-0060(1) (January 8 2008), a submission that expresses "an intent to appeal a specific hearing decision" will be considered an application for review.