

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1236

Hearing Decisions 15-UI-45066 and 15-UI-45092 Affirmed
Request for Hearing on Decision # 152327 Dismissed
Overpayment

PROCEDURAL HISTORY: On April 9, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from November 16, 2014 through April 4, 2015 (decision # 152327). On April 29, 2015, decision # 152327 became final without a request for hearing having been filed. On July 28, 2015, the Department served notice of an administrative decision concluding that claimant was overpaid \$3,954 in benefits that she must repay (decision # 131521). On August 3, 2015, claimant filed a late request for hearing on decision # 152327, and a timely request for hearing on decision # 131521. On September 25, 2015, ALJ Wyatt conducted hearings, and on September 29, 2015 issued Hearing Decision 15-UI-45066, dismissing claimant's late request for hearing on decision # 152327, and Hearing Decision 15-UI-45092, affirming decision # 131521. On October 14, 2015, claimant filed applications for review of Hearing Decisions 15-UI-45066 and 15-UI-45092 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-45066 and 15-UI-45092. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-1234 and 2015-EAB-1236). EAB considered the hearing records and claimant's written arguments.

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from November 16, 2014 through February 14, 2015 (weeks 47-14 through 06-15) and February 22 through April 4, 2015 (weeks 08-15 through 13-15), the weeks at issue. For each week claimed, claimant indicated that she actively sought work that week. The Department therefore paid claimant \$3,954 in benefits for the weeks at issue.

(2) Claimant failed to file a timely request for hearing on decision # 152327 because she did not understand that if the decision became final, she would be required to repay the benefits she had received for the weeks at issue. However, decision # 152327 specifically stated,

NOTICE: This decision results from information obtained after the original decision to pay or not pay benefits, and may create an overpayment if you were previously allowed

benefits. If this decision becomes final, and you were overpaid benefits, you will be notified of the amount.

Decision # 152327 at 2.

CONCLUSIONS AND REASONS: We agree with the ALJ's dismissal of claimant's late request for hearing on decision # 152327. We also agree with the ALJ that claimant was overpaid \$3,954 in benefits that she must repay.

To be timely, claimant's request for hearing on decision # 152327 had to be filed by April 29, 2015. ORS 657.269(2). Claimant did not file a request for hearing until August 3, 2015, over three months late. ORS 657.875 provides that the period for filing a request for hearing may be extended upon a showing of good cause. "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control. OAR 471-040-0010(1) (February 10, 2012). However, good cause does not include not understanding the implications of a decision when it is received. OAR 471-040-0010(1)(b)(B).

To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed. ORS 657.155(1)(c). 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.*

In the present case, claimant failed to file a timely request for hearing on decision # 152327 because she did not understand that if the decision became final, she would be required to repay the benefits she had received for the weeks at issue. Under OAR 471-040-0010(1)(b)(B), claimant filed her late request for hearing without good cause, and her hearing request therefore is dismissed. Thus, as a matter of law, claimant did not actively seek work during the weeks at issue, and is ineligible for benefits for those weeks. Claimant therefore made a false statement or misrepresentation of a material fact each time she indicated that she actively sought work during the weeks at issue. Regardless of claimant's knowledge or intent, she received \$3,954 in benefits to which she was not entitled, and is liable to either repay the benefits or have the \$3,954 deducted from any future benefits otherwise payable to her under ORS chapter 657.

DECISION: Hearing Decisions 15-UI-45066 and 15-UI-45092 are affirmed.

Susan Rossiter and J. S. Cromwell.

DATE of Service: November 4, 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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