

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0044

Affirmed
No Disqualification
No Overpayment Assessed

PROCEDURAL HISTORY: On September 1, 2015, the Oregon Employment Department (the Department) served notice of two administrative decisions: decision # 134844 concluded that claimant voluntarily left work without good cause and decision # 194238 assessed a \$4,050 overpayment, a \$607.50 monetary penalty, and 30 penalty weeks, based on decision # 134844. Claimant filed timely requests for hearing. On December 7, 2015, ALJ Vincent conducted hearings, and on December 15, 2015 issued two hearing decisions: Hearing Decision 15-UI-49391 concluded that the employer discharged claimant, but not for misconduct, and Hearing Decision 15-UI-49390 concluded that claimant was not overpaid unemployment benefits and was not liable for a monetary penalty or any penalty weeks. On January 4, 2016, the employer 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-49390 and 15-UI-49391. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0044 and 2016-EAB-0045).

In its written arguments, the employer's representative offered information that was not part of the hearing record in either case. Under OAR 471-040-0090 (October 29, 2006), EAB may consider new information if the information is relevant and material to EAB's determination, and the party offering the information demonstrates that circumstances beyond its reasonable control prevented the party from offering the information at the hearing. In support of its request to have EAB consider new information in its review of Hearing Decision 15-UI-49391, the decision concerning claimant's work separation, the employer's representative stated that the employer submitted additional documents, but that these materials "ended up getting attached to a different case [the case concerning the overpayment decision]." The employer's representative, who testified in both of the hearings conducted on December 7, 2015, had ample opportunity to bring to the ALJ's attention any problems with evidence submitted for the hearings, but did not to do so. It was well within the employer's reasonable control to tell the ALJ that about documents it had submitted and wanted to offer into evidence at the hearing on claimant's

work separation. The request to have EAB consider additional evidence in its review of Hearing Decision 15-UI-49391 is therefore denied. The new information the employer's representative asked EAB to consider in its review of Hearing Decision 15-UI-49390, the decision concerning overpayment of unemployment benefits, concerned the circumstances of claimant's work separation. Because this information is not material or relevant to the issue of whether claimant was overpaid unemployment benefits, we will not consider it.

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-49390 and 15-UI-49391 are affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: January 14, 2016

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.