

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0312

Application for Review Dismissed

PROCEDURAL HISTORY: On July 18, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$1,984 overpayment, \$396.80 monetary penalty and 15 penalty weeks (decision # 195703). Claimant filed a timely request for hearing. On August 27, 2014, ALJ R. Frank conducted a hearing, and on September 4, 2014 issued Hearing Decision 14-UI-24590, agreeing with the Department's assessment of a \$1,984 overpayment, \$396.80 monetary penalty and 15 penalty weeks. On September 24, 2014, Hearing Decision 14-UI-24590 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On March 15, 2016, claimant filed a late application for review with EAB.

EAB considered claimant's written argument.

FINDINGS OF FACT: (1) Decision # 195703 stated, "The claimant is disqualified for 15 week(s)." It also stated, in a "Penalty Weeks" section, "Claimant is disqualified for 15 week(s) of future benefits. To be given credit toward this penalty, claimant must claim weeks(s) [*sic*] for which claimant would have otherwise received payment. (See enclosures for conditions to satisfy disqualification.)"

(2) Hearing Decision 14-UI-24590 described one of the issues to be resolved by the hearing as "Whether . . . claimant should be liable for a penalty in addition to a disqualification." The decision stated "Claimant must be disqualified from receiving 15 weeks of benefits." The decision also stated, in the "Order" section, "Claimant is disqualified from 15 weeks of future benefits . . ."

(3) Claimant filed a late request for hearing because, after repaying the overpayment amount to the Department, "[i]t has come to my attention that part of the decision [on her case] was a 15 week penalty for any future unemployment cases I might open," and she "did not realize that was part of the decision at the time." See Claimant's application for review to EAB. Claimant further stated, "I feel that since I paid back all of the benefits paid in error that I should not be further penalized. It was just a lack of understanding on my part in the first place."

CONCLUSIONS AND REASONS: Claimant did not establish good cause to file an untimely application for review, and her late application for review must be dismissed.

ORS 657.270(6) required claimant's application for review to be filed no later than September 24, 2014; it was filed approximately one and one-half years late, on March 15, 2016, as shown by the receipt date stamped on her faxed application for review. OAR 471-041-0065 (October 29, 2006).

Under OAR 471-041-0070 (October 29, 2006), EAB shall dismiss a late application for review unless "the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing." Claimant filed a late application for review because she was not aware that she was liable for a 15-week penalty disqualification period in addition to her overpayment and monetary penalty. However, the administrative and hearing decisions in this matter repeatedly stated that claimant was liable for that 15-week penalty. Claimant did not explain how it was beyond her reasonable control to read the administrative and hearing decisions in this matter, and, to any extent she did not understand the implications of either decision, to request help from the Department or Office of Administrative Hearings. Claimant therefore did not show it was beyond her reasonable control to file an application for review in this case and has not shown good cause to extend the filing deadline.

Because the application for review was filed after the 20-day deadline provided by ORS 657.270(6), and good cause to extend the time allowed has not been shown, the application for review must be dismissed.

DECISION: The application for review filed March 15, 2016 is dismissed. Hearing Decision 14-UI-24590 remains undisturbed.

Susan Rossiter and J. S. Cromwell;
D. P. Hettle, not participating.

DATE of Service: March 23, 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.

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