

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0397-R

*Late Request for Reconsideration of Employment Appeals Board Decision 2016-EAB-0052 Dismissed
Ineligible
Employment Appeals Board Decision 2016-EAB-0397 Adhered to on Reconsideration
Overpayment Assessed*

PROCEDURAL HISTORY: On October 22, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 95147) concluding claimant did not actively seek work during weeks 37-15 through 40-15. Claimant filed a timely request for hearing. On December 22, 2015, ALJ Frank conducted a hearing, and on December 30, 2015, issued Hearing Decision 15-UI-50251, affirming the Department's decision. On January 11, 2016, claimant filed an application for review with the Employment Appeals Board (EAB). On January 15, 2016, EAB issued EAB Decision 2016-EAB-0052, affirming the ALJ's decision. On February 15, 2016, EAB Decision 2016-EAB-0052 became final without a request for reconsideration or Petition for Judicial Review with the Oregon Court of Appeals having been filed.

On February 18, 2016, the Department served notice of an administrative decision based on decision # 95147 assessing a \$960 overpayment (decision # 132527). Claimant filed a timely request for hearing. On March 28, 2016, ALJ S. Lee conducted a hearing, and on March 31, 2016 issued Hearing Decision 16-UI-56269, affirming the Department's decision. On April 5, 2016, claimant filed an application for review with EAB. On April 12, 2016, EAB issued EAB Decision 2016-EAB-0397, affirming the ALJ's decision.

On April 20, 2016, claimant submitted written argument disputing EAB Decision 2016-EAB-0052's finding of facts and resulting conclusion that claimant did not actively seek work during weeks 37-15 through 40-15. Claimant's argument is construed as requests for reconsideration of EAB Decisions 2016-EAB-0052 and 2016-EAB-0397. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of claimant's requests for reconsideration. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0052-R and 2016-EAB-0397-R).

CONCLUSIONS AND REASONS: Claimant's late request for reconsideration of EAB Decision 2016-EAB-0052 is dismissed. Hearing Decision 16-UI-56269 is affirmed on reconsideration of EAB Decision 2016-EAB-0397.

Any party may request reconsideration to correct an error of material fact or law. OAR 471-041-0145(1) (October 29, 2006). However, the request is subject to dismissal if it is not filed on or before the 20th day after the decision sought to be reconsidered is mailed. OAR 471-041-0145(2).

In his request for reconsideration, claimant disputed EAB Decision 2016-EAB-0052's finding of facts resulting in the conclusion that claimant did not actively seek work during weeks 37-15 through 40-15. However, claimant's request for reconsideration of EAB Decision 2016-EAB-0052 was filed over two months after the decision was mailed. Claimant's request for reconsideration of that decision therefore was late, and is dismissed.

On February 15, 2016, EAB Decision 2016-EAB-0052 became final without a Petition for Judicial Review with the Oregon Court of Appeals having been filed. Thus, as a matter of law claimant did not actively seek work during weeks 37-15 through 40-15, and is ineligible for the \$960 in benefits he received for those weeks. EAB Decision 2016-EAB-0397 therefore is adhered to on reconsideration.

DECISION: The late request for reconsideration of EAB decision 2016-EAB-0052 is dismissed. Hearing Decision 16-UI-56269 is affirmed on reconsideration of EAB Decision 2016-EAB-0397.

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

DATE of Service: April 26, 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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