

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0745

Hearing Decision 16-UI-5761 Reversed and Remanded on Reconsideration of EAB Decision 2016-EAB-0527
Hearing Decision 16-UI-61652 -- Reversed & Remanded

PROCEDURAL HISTORY: On July 14, 2015, the Oregon Employment Department (the Department) served notice of decision # 115334, concluding that claimant was not available for work from November 22, 2014¹ through March 7, 2015. Decision # 115334 became final on August 3, 2015, without a request for hearing having been filed. On August 14, 2015, the Department issued decision # 94915, concluding that claimant was overpaid unemployment benefits in the amount of \$3,192, based on an earlier decision that found she was unavailable for work from March 15, through June 20, 2015 (weeks 11-15 through 24-15). Decision # 94915 became final on September 3, 2015, without a request for hearing having been filed. On October 21, 2015, the Department issued decision # 160100,² which corrected decision # 115334 and concluded that claimant was not available for work from November 2, 2014 through March 7, 2015 (weeks 45-14 through 9-15). Decision # 160100 became final on November 10, 2015, without a request for hearing having been filed. On February 4, 2016, the Department issued decision # 91747, concluding that claimant was overpaid benefits in the amount of \$2,520, based on decision # 160100. On March 28, 2016, claimant filed untimely hearing requests on decisions # 115334, # 94915 and # 91747.

On March 28, 2016, ALJ Kangas issued Hearing Decision 16-UI-455908, which dismissed claimant's hearing request on decision # 115334 as untimely and Hearing Decision 16-UI-55910, which dismissed claimant's hearing request on decision # 94915 as untimely. On March 29, 2016, ALJ Kangas issued Hearing Decision 16-UI-55972, which dismissed claimant's request for hearing on decision # 91747 as untimely. All three hearing decisions were subject to claimant's right to renew these decisions by submitting responses to appellant questionnaires within 14 days. Claimant timely responded to the appellant questionnaires.

¹ This date appears to be a clerical error; November 22, 2014 is the end of benefits week 47-14, not the beginning.

² A copy of decision # 160100 has been marked as EAB Exhibit 1 and attached to this decision. Any party that objects to the admission of EAB Exhibit 1 must submit its objections to this office in writing, setting forth the basis of the objection, 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

On April 19, 2016, ALJ Kangas issued Hearing Decision 16-UI-57611, which re-dismissed claimant's hearing request on decision # 115334, and Hearing Decision 16-UI-57631, which re-dismissed claimant's hearing request on decision # 94915. Also on April 19, 2016, the Office of Administrative issued a letter, cancelling Hearing Decision 16-UI-55972.

On May 2, 2016, claimant filed applications for review of Hearing Decisions 16-UI-57611 and 16-UI-57631 with the Employment Appeals Board (EAB). On May 12, 2016, EAB issued EAB Decision 2016-EAB-0527, which affirmed Hearing Decision 16-UI-57611, and EAB Decision 2016-EAB-0528, which affirmed Hearing Decision 16-UI-57631.

On June 2, 2016, ALJ Shoemake conducted a hearing on claimant's request for hearing on decision #91747, and on June 13, 2016 issued Hearing Decision 16-UI-61652, allowing claimant's late request for hearing and affirming decision #91747. On June 18, 2015, claimant filed an application for review of Hearing Decision 16-UI-61652 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decision 16-UI-61652, and its reconsideration of Appeals Board Decision 2016-EAB-0527. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0527-R and 2016-EAB-0745). No adversely affected party requested review of the portion of Hearing Decision 16-UI-61652 concluding claimant had good cause for the late request for hearing. We therefore confined our review to the issue of claimant's overpayment.

CONCLUSION AND REASONS: EAB's decision in Appeals Board Decision 2016-EAB-0527 is reconsidered to correct errors of fact and law, and Hearing Decision 16-UI-57611 is reversed and remanded. Hearing Decision 16-UI-61652 is also reversed and remanded.

RECONSIDERATION OF APPEALS BOARD DECISION 2016-EAB-0527: In Appeals Board Decision 2016-EAB-0527, EAB affirmed the ALJ's conclusion in Hearing Decision 16-UI-57611 that claimant failed to demonstrate good cause for filing an untimely hearing request on decision # 115334, a decision issued on July 14, 2015. The record in this case shows that claimant received the decision she wished to appeal in November 2015 (Exhibit 1). We infer from this evidence that claimant wanted to appeal decision # 160100, which the Department issued on October 21, 2015. As noted above, decision # 160100 corrected decision # 115334 regarding claimant's availability for work. The record also shows that claimant's request for hearing was made to a Department representative on March 19, 2016. The Department representative mistakenly noted on the hearing request form that claimant was requesting a hearing on decision # 115334; the representative apparently did not realize that this decision had been corrected and superseded by a later decision (decision # 160100). As a result of this mistake, claimant was denied the opportunity to present and have considered reasons why she may have had good cause for failing to timely file a hearing request on the October 21, 2015 decision.

Under ORS 657.290(3), EAB may, upon its own motion, reconsider a previous decision to correct an error of fact or law. Because the ALJ's conclusion in Hearing Decision 16-UI-57611 was based on consideration of the wrong administrative decision, EAB erred in affirming this hearing decision. Hearing Decision 16-UI-57611 is therefore reversed, and the matter remanded to the ALJ to consider whether claimant had good cause for filing an untimely hearing request on decision # 160100. If the

ALJ determines that claimant had good cause for her untimely hearing request, the ALJ must then consider the merits of claimant's hearing request.

REVIEW OF HEARING DECISION 16-UI-61652: In Hearing Decision 16-UI-61652, the ALJ concluded that claimant was overpaid unemployment benefits in the amount of \$2,520 based on an October 21, 2015 administrative decision (decision # 160100) that found claimant was not available for work from November 2, 2014 through March 7, 2015. The ALJ found that decision # 160100 became final and legally binding on November 10, 2015, due to claimant's failure to file a request for hearing on or before that date. As discussed above, however, claimant was denied an opportunity to offer reasons why she had good cause for her failure to file a timely hearing request on decision # 160100. Hearing Decision 16-UI-61652 is therefore reversed, and this matter remanded to the Office of Administrative Hearings. Consistent with the above order, a hearing on benefits overpaid to claimant as a result of decision # 160100 can appropriately be consolidated with the hearing on the claimant's hearing request on that decision.

DECISION: Hearing Decision 16-UI-5761 is set aside on reconsideration of EAB Decision 2016-EAB-0527. Hearing Decision 16-UI-61652 also is set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: June 27, 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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