

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0874-R

Request for Reconsideration Granted

Appeals Board Decisions 2016-EAB-0874, 2016-EAB-0875 and 2016-EAB-0876 Adhered to on Reconsideration

PROCEDURAL HISTORY: On April 29, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 81909) concluding that claimant did not actively search for work during the following weeks: weeks 33-15 through 34-15; 36-15; 44-15; 47-15; 50-15 through 52-15; 3-16; 7-16; 9-16 and 10-16; 12-16; 14-16 and 17-16. On May 18, 2016, the Department served notice of an administrative decision (decision # 102451) concluding that claimant did not actively search for work during the following weeks: 21-14; 25-14; 28-14; 32-14; 50-14; 52-14 through 1-15; 4-15 and 5-15; 10-15 and 11-15; 14-15 through 17-15. On May 19, 2016, decision # 81909 became final without a request for hearing having been filed. On June 7, 2016, decision # 102451 became final without an appeal having been filed.

On June 16, 2016, the Department served notice of an administrative decision (# 195135) assessing a \$6,118 overpayment, a \$1,835.40 monetary penalty, and 47 penalty weeks, based on decisions # 81909 and # 102451. On June 16, 2016, claimant filed a timely request for hearing on decision # 195135 and untimely requests for hearing on decisions # 81909 and # 102451. On July 14, 2016, ALJ S. Lee conducted hearings, and on July 21, 2016, issued the following hearing decisions: Hearing Decision 16-UI-64208 dismissed claimant's request for hearing on decision # 81909 as untimely without good cause; Decision 16-UI-64209 dismissed claimant's request for hearing on decision # 102451 as untimely without good cause; and Decision 16-UI-64235 affirmed decision # 195135.¹ On July 25, 2016, claimant filed applications for review with the Employment Appeals Board (EAB). On August 3, 2016, EAB issued Appeals Board Decisions 2016-EAB-0874, 2016-EAB-0875, and 2016-EAB-0876 which affirmed the hearing decisions under review.

On August 4, 2016, claimant submitted a written argument to EAB. EAB will exercise its discretion under ORS 657.290(3) to reconsider its decisions and address some of the issues raised in claimant's argument.

¹ In Appeals Board Decisions 2016-EAB-0874, 2016-EAB-0875, and 2016-EAB-0876, EAB incorrectly stated that Hearing Decisions 16-UI-64208 and 16-UI-64209 affirmed administrative decisions #81909 and #102541, respectively. That error has been corrected in the decisions on reconsideration.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its reconsideration of Appeals Board Decisions 2016-EAB-0874, 2016-EAB-0975, and 2016-EAB-0876. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2016-EAB-0874-R, 2016-EAB-0975-R, and 2016-EAB-0876-R).

In his argument, claimant contested the Department's finding that he was required to actively search for work during the weeks at issue. The Department's determination in decisions # 81909 and # 102541 that he was required to actively search for work and did not do so during the weeks at issue became final on May 19, 2016 and June 7, 2016. Claimant's late requests for hearing were dismissed by the ALJ in Hearing Decisions 16-UI-64208 and 16-UI-64209 and those dismissals were affirmed in Appeals Board Decisions 2016-EAB-0875 and 2016-EAB-0874. The conclusion that claimant was required to actively search for work and did not do so during the weeks at issue has become final as a matter of law and we have no authority to address claimant's arguments concerning his work search. The ALJ's determination in Hearing Decision 16-UI-64235 --that claimant received \$6,118 in unemployment benefits which he ineligible to receive because he did not actively search for work during the weeks at issue -- therefore was also correct as a matter of law.

Also in his written argument, claimant denied the charge of "willfully and unlawfully defrauding the Oregon Employment Department to obtain benefits." In Hearing Decision 16-UI-64235, the ALJ found that claimant misrepresented his status by asserting he was a member of a closed shop union and subject only to the work search requirements of OAR 471-030-0036(5)(d) (February 23, 2014), which provides that a member in good standing of a closed shop union is considered to be actively seeking work if the individual remains in contact with the union and is "capable of accepting and reporting for work when dispatched by the union." The ALJ noted that claimant was a retiree and therefore no longer an active, dues paying union member. Hearing Decision 16-UI-64235 at 8. Even if the claimant was considered a member in good standing of a closed shop union, he was not capable of reporting for work opportunities offered by his union: claimant stated in his argument that he was unwilling and unable to perform union work. We agree with ALJ's conclusion that claimant, as someone with a lengthy history of filing for unemployment benefits and many years of union membership, knew he was expected to look for work during the weeks he claimed benefits. The ALJ also determined that claimant was not available for all suitable work opportunities because he wanted to work only part-time, a determination with which claimant agreed; in his written argument, he asserted that he "would not work full time for minimum wage." We therefore find no error in the ALJ's determination that claimant is subject to a \$1,835.40 monetary penalty and disqualified from 47 weeks of future benefits because he intentionally misrepresented his availability for work and union status.

For the reasons stated above, we conclude that EAB did not err in affirming Hearing Decisions 16-UI-64208, 16-UI-64209, and 16-UI-64235. Because we find no error of fact or law that requires correction, we adhere to our original decisions in Appeals Board Decisions 2016-EAB-0874, 2016-EAB-0875 and 2016-EAB-0876. *See* ORS 657.290(3) (reconsideration by EAB may include issuing a new decision "to the extent necessary and appropriate for the correction of a previous error of fact or law.")

DECISION: Reconsideration is granted. Appeals Board Decisions 2016-EAB-0874, 2016-EAB-0875 and 2016-EAB-0876 are adhered to on reconsideration.

Susan Rossiter and D. P. Hettle;

J. S. Cromwell, not participating.

DATE of Service: August 5, 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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