

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0882

Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On May 8, 2015, the Oregon Employment Department (Department) served notice of an administrative decision (decision # 103857) concluding that claimant was not available for work from October 26, 2014 until March 14, 2015 (weeks 44-14 through 10-15). On May 11, 2015, the Department served notice of an administrative decision (decision # 200563) assessing a \$3,154 overpayment, \$946.20 monetary penalty and 23 penalty weeks based on decision # 103857. On May 28, 2015, decision # 103857 became final without claimant having filed a timely request for hearing. On June 1, 2015, decision # 200563 became final without claimant having filed a timely request for hearing. On February 5, 2016, claimant filed a late request for hearing on decision # 200563 by fax. On February 10, 2016, ALJ Kangas issued Hearing Decision 16-UI-52686, dismissing claimant's late request for hearing on decision # 200563 subject to claimant's right to renew the request by responding to an appellant questionnaire by February 24, 2016. On March 1, 2016, Hearing Decision 16-UI-52686 became final without claimant having responded to the appellant questionnaire or filed an application for review. On May 4, 2016, claimant received a letter from the United States Department of the Treasury notifying her that her federal tax refund had been applied to her outstanding debt with the Department. On May 13, 2016, claimant responded to the appellant questionnaire attached to Hearing Decision 16-UI-52686. On May 19, 2016, ALJ Kangas reviewed claimant's response and issued Hearing Decision 16-IU-59991, re-dismissing claimant's late request for hearing. On June 8, 2016, claimant filed an application for review of Hearing Decision 16-UI-59991 with the Employment Appeals Board (EAB). On June 10, 2016, EAB issued Appeals Board Decision 2016-EAB-0679 which reversed Hearing Decision 16-UI-59991 and remanded the matter to the Office of Administrative Hearings for further proceedings.

On June 30, 2016, ALJ Menegat conducted a hearing, and on July 13, 2016, issued Hearing Decision 16-UI-63660 which modified decision # 200563 by assessing a \$3,154 overpayment but no penalty weeks or monetary penalty. On July 29, 2016, claimant filed an application for review of Hearing Decision 16-UI-63660 with EAB.

EAB reviewed the entire record in this case. On *de novo* review and pursuant to ORS 657.275(2), Hearing Decision 16-UI-63660 is **adopted**.¹

DECISION: Hearing Decision 16-UI-63660 is affirmed.

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

DATE of Service: August 4, 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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¹ On July 29, 2016, claimant filed an untimely request for hearing on decision # 103857, the decision regarding her availability for work during weeks 44-14 through 10-15. Claimant’s hearing request is currently pending before the Office of Administrative Hearings. Should claimant’s late hearing request be allowed and decision # 103857 reversed, the amount of the overpayment assessed by Hearing Decision 16-UI-63660 may be subject to review and modification.