

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1042

Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: Effective December 28, 2014, claimant filed an initial claim for unemployment insurance benefits. On January 13, 2015, the Oregon Employment Department (the Department) served notice of a claim determination concluding that claimant had a valid claim for unemployment insurance benefits with a weekly benefit amount of \$549, and a maximum benefit amount of \$14,272. On January 23, 2015, the claim determination became final. Between December 2014 and April 27, 2015, claimant received \$7,686 in unemployment insurance benefits.

On November 16, 2015, the Department issued notice of an amended claim determination concluding that claimant did not have any subject wages in his base year, and, consequently, did not have a valid claim for unemployment insurance benefits. On November 26, 2015, the amended claim determination became final without claimant having filed a timely request for hearing. On December 10, 2015, the Department issued notice of an administrative decision, based on the amended claim determination, assessing a \$7,686 overpayment (decision # 92956). On December 30, 2015, decision # 92956 became final without claimant having filed a timely request for hearing.

On June 7, 2016, claimant filed late requests for hearing on the amended claim determination and decision # 92956. On June 16, 2016, the Office of Administrative Hearings (OAH) mailed notice of two hearings scheduled for June 30, 2016. On June 30, 2016, ALJ Holmes-Swanson conducted two hearings, and on July 6, 2016 issued Hearing Decision 16-UI-63137, dismissing claimant's late request for hearing on the amended claim determination, and Hearing Decision 16-UI-63141, dismissing claimant's late request for hearing on decision # 92956.

On July 11, 2016, claimant filed timely applications for review of both decisions with the Employment Appeals Board (EAB). On July 19, 2016, EAB issued Employment Appeals Board Decisions 2016-EAB-0834 and 2016-EAB-0835, allowing claimant's late requests for hearing.

On August 25, 2016, ALJ Holmes-Swanson conducted a hearing on the merits of decision # 92956, and on August 31, 2016 issued Hearing Decision 16-UI-66634, affirming the Department's assessment of a

\$7,686 overpayment. On September 7, 2016, claimant filed an application for review of Hearing Decision 16-UI-66634 with EAB.¹

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 16-UI-66634 is affirmed.

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

DATE of Service: September 30, 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 September 22, 2016, ALJ Holmes-Swanson issued Hearing Decision 16-UI-67904, affirming the Department's November 16, 2015 amended claim determination. Pursuant to that decision, claimant's earnings from base year employment with Trident Management, LLC were not "subject employment" for purposes of unemployment insurance. The overpayment at issue in this case is based on that determination. Therefore, unless and until Hearing Decision 16-UI-67904 is reversed, the amount of the overpayment in this decision cannot be disturbed. Hearing Decision 16-UI-67904 will become final on October 12, 2016 unless claimant files a timely application for review of that decision with EAB.