

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1327-R

Reconsideration Granted

Appeals Board Decisions 2016-EAB-1325, 2016-EAB-1326 and 2016-EAB-1327 Adhered to on Reconsideration

PROCEDURAL HISTORY: On May 20, 2016, the Oregon Employment Department (the Department) served notice of two administrative decisions: decision # 80648 concluded that claimant did not actively seek work from March 13 through April 9, 2016 (weeks 11-16 through 15-16), and decision # 83034 concluded that claimant did not actively seek work from May 1 through May 14, 2016 (weeks 18-16 and 19-16). On June 9, 2016, these administrative decisions became final without claimant having filed a request for hearing. On June 21, 2016 the Department served notice of a decision, based on decision # 80648, concluding that claimant was overpaid \$1,937 in unemployment benefits for weeks 11-16 through 14-16 (decision # 131618). On July 11, 2016, decision # 131618 became final without a request for hearing having been filed. On July 27, 2016, claimant filed a late request for hearing on decisions # 80648, # 83034 and # 131618.

On August 2, 2016, ALJ Kangas issued Hearing Decision 16-UI-74882, dismissing claimant's request for hearing on decision # 131618 as untimely without good cause. On August 11, 2016, claimant filed an application for review of Hearing Decision 16-UI-74882 with the Employment Appeals Board (EAB). On September 26, 2016, EAB issued Appeals Board Decision 2016-EAB-0941, reversing and remanding Hearing Decision 16-UI-74882 for further development of the record on claimant's late request for hearing on decisions # 80648, # 83034 and # 131618.

On October 27, 2016, ALJ Shoemake conducted a consolidated hearing, and on November 4, 2016, issued the following decisions: Hearing Decision 16-UI-70589 concluded that claimant failed to show good cause for filing a late hearing request on decision # 80648; Hearing Decision 16-UI-70590 concluded that claimant failed to show good cause for filing a late hearing request on decision # 83034; and Hearing Decision 16-UI-70622 allowed claimant's late request for hearing on decision # 131618 and affirmed that decision. On November 28, 2016, claimant filed applications for review of all three hearing decisions with the Employment Appeals Board (EAB). On November 30, 2016, EAB issued the following decisions: Appeals Board Decision 2016-EAB-1325 affirmed Hearing Decision 16-UI-70590; Appeals Board Decision 2016-EAB-1326 affirmed Hearing Decision 16-UI-70589; and Appeals Board Decision 2016-EAB-1327 affirmed Hearing Decision 16-UI-70622.

By letter dated December 12, 2016, claimant presented a written argument and “[s]upporting documentation for written argument requesting a hearing to argue the fact that I did actively seek work with my employer within the minimum 4-week periods that I was on temporarily [sic] layoff.” The letter included an explanation of claimant’s work search activities during the weeks at issue. EAB will exercise its discretion under OAR 657.290(3) to reconsider EAB Decisions 2016-EAB-1325, 2016-EAB-1326, and 2016-EAB-1327 to address the issue raised in claimant’s letter.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its reconsideration of EAB Decisions 2016-EAB-1325, 2016-EAB-1326, and 2016-EAB-1327. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2016-EAB-1325-R, 2016-EAB-1326-R and 2016-EAB-1327-R).

CONCLUSION AND REASONS: Claimant’s request for reconsideration is granted. We adhere to EAB Decisions 2016-EAB-1325, 2016-EAB-1326, and 2016-EAB-1327.

In his argument, claimant contested the Department’s finding that he was required to actively search for work during the weeks at issue, weeks 11-16 through 15-16, and weeks 18-16 and 19-16. The Department’s determination in decisions # 80648 and # 83034 that he was required to actively search for work and did not do so during the weeks at issue became final on June 9, 2016. Claimant’s late requests for hearing were dismissed by the ALJ in Hearing Decisions 16-UI-70589 and 16-UI-70590 and those dismissals were affirmed in EAB Decisions 2016-EAB-1325 and 2016-EAB-1326.¹ 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 consider evidence of or address arguments concerning claimant’s work search. The ALJ’s determination in Hearing Decision 16-UI-70622 --that claimant received \$1,937 in unemployment he was ineligible to receive because he did not actively search for work during the weeks at issue – was therefore correct as a matter of law.

Also in his argument, claimant denied making a false statement to the Department, or misrepresenting or failing to disclose a material fact. When claimant claimed benefits for the weeks at issue, he reported that he was actively seeking work. That was an untrue statement, because it was determined as a matter of law that claimant was *not* actively seeking work. Regardless of claimant’s knowledge or intent, he is obligated by law to repay those benefits.²

For the above reasons, we find no error of fact or law that requires correction in EAB Decisions 2016-EAB-1325, 2016-EAB-1326 and 2016-EAB-132 and we adhere to these decisions. *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).

¹ We note that there is no indication that claimant appealed these EAB decisions to the Oregon Court of Appeals.

² ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual’s knowledge or intent. *Id.*

DECISION: Reconsideration is granted. EAB Decisions 2016-EAB-1325, 2016-EAB-1326 and 2016-EAB-1327 are adhered to on reconsideration.

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

DATE of Service: December 16, 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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