

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0209

Hearing Decisions 17-UI-98118 and 17-UI-98119 – Applications for Review Dismissed
Hearing Decision 18-UI-103580 Affirmed – Overpayment Assessed

PROCEDURAL HISTORY: On June 5, 2017, the Oregon Employment Department (the Department) served two notices of two administrative decisions, one concluding claimant did not actively seek work from April 16, 2017 to May 13, 2017 (decision # 120315) and the second concluding that claimant did not actively seek work from May 21, 2017 to May 27, 2017 (decision # 120922). Claimant filed timely requests for hearing on decisions # 120315 and 120922. On June 14, 2017, the Office of Administrative Hearings (OAH) mailed notice of a consolidated hearing on decisions # 120315 and 120922 scheduled for June 29, 2017 at 1:30 p.m., at which time claimant failed to appear. On June 29, 2017, ALJ Meerdink issued Hearing Decision 17-UI-86937, dismissing claimant's request for hearing on decision # 120315 for failure to appear, and Hearing Decision 17-UI-86938, dismissing claimant's request for hearing on decision # 120922 for failure to appear. On July 19, 2017, Hearing Decisions 17-UI-86937 and 17-UI-86938 became final without claimant having filed a request to reopen the June 29th consolidated hearing.

On November 28, 2017, the Department served notice of a third administrative decision concluding that claimant was overpaid \$1,653.00 and liable to repay that amount to the Department (decision # 151036). On November 30, 2017, claimant filed a late request to reopen the June 29th consolidated hearing on decisions # 120315 and 120922 and a timely request for hearing on decision # 151036. On December 4, 2017, ALJ Kangas reviewed claimant's late request to reopen and issued Hearing Decision 17-UI-98118, denying claimant's late request to reopen the June 29th hearing on decision # 120315, and Hearing Decision 17-UI-98119, denying claimant's late request to reopen the June 29th hearing on decision # 120922. On December 26, 2017, Hearing Decisions 17-UI-98118 and 17-UI-98119 became final without claimant having filed a timely application for review with the Employment Appeals Board (EAB).

On February 1, 2018, OAH mailed notice of a hearing on decision # 151036 scheduled for February 12, 2018. On February 12, 2018, ALJ Seideman conducted a hearing, and on February 20, 2018 issued Hearing Decision 18-UI-103580, affirming decision # 151036's assessment of a \$1,653.00 overpayment claimant was liable to repay. On February 23, 2018, claimant filed late applications for review of

Hearing Decisions 17-UI-98118 and 17-UI-98119 and a timely application for review of Hearing Decision 18-UI-103580 with EAB. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-98118 and 17-UI-98119 and 18-UI-103580. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2018-EAB-0209, 2018-EAB-0210 and 2018-EAB-0211).

EAB considered claimant's written argument when reaching this decision to the extent it was relevant and based upon the hearing record.

FINDINGS OF FACT: (1) On January 16, 2017, claimant filed an initial claim for unemployment insurance benefits. Claimant's weekly benefit amount was \$435.

(2) Claimant filed weekly claims for benefits during weeks including April 16, 2017 to May 13, 2017 (weeks 16-17 to 19-17), the weeks at issue. Each week claimant claimed, she reported to the Department that she had actively sought work during the week claimed. Based in part on claimant's reports, the Department paid claimant \$1,653.00 in unemployment insurance benefits during the weeks at issue.

(3) The Department subsequently concluded that claimant had not actively sought work during the weeks at issue, and issued notice of decisions so stating. The decisions finding claimant did not actively seek work during the weeks at issue, and therefore was not entitled to benefits, are final as a matter of law.

(4) Claimant received notice of Hearing Decisions 17-UI-98118 and 17-UI-98119, both denying her late requests to reopen the June 29th consolidated hearing. She understood the decisions "but after it was denied once I figured there wasn't anything that could be done" because "if the state denied it what good would it be to appeal it." See Claimant's written argument. Claimant allowed both decisions to become final without filing applications for review of them.

(5) During the February 12th hearing on decision # 151036, the ALJ explained to claimant that there was little she could do to dispute the Department's assessment of the overpayment unless she pursued a request to reopen the underlying actively seeking work issues. Claimant filed late applications for review in those cases eleven days later.

CONCLUSIONS AND REASONS: Claimant's late applications for review of Hearing Decisions 17-UI-98118 and 17-UI-98119 should be dismissed. We agree with the Department and the ALJ that claimant was overpaid \$1,653.00 in benefits that she is liable to repay or have deducted from future benefits otherwise payable.

Late Applications for Review. ORS 657.270(6) provides that an ALJ's decision becomes final unless a party files an application for review with EAB within 20 days after the decision was mailed. ORS 657.875 allows the 20-day deadline to be extended "a reasonable time" upon a showing of "good cause." OAR 471-041-0070(2) (February 18, 2012) defines "good cause" as when "factors or circumstances beyond the applicant's reasonable control prevented timely filing" and "a reasonable time" as "seven days after the circumstances that prevented timely filing ceased to exist."

Claimant did not establish good cause to file her applications for review of Hearing Decisions 17-UI-98118 and 17-UI-98119 because she did not describe circumstances that prevented her timely filing. Claimant's belief that it would not do her any good to appeal did not prevent her from filing. Claimant's belief that "there wasn't anything that could be done" was not logical given that the hearing decisions at issue both included a description of her appeal rights, application for review forms for her to complete and send to EAB, and instructions for how to do complete and send the forms to EAB. As such, claimant's belief cannot be said to have prevented her from filing applications for review of the hearing decisions that denied her requests to reopen. Claimant therefore did not establish "good cause" for the late applications for review, and her late applications must be dismissed.

Even if we had concluded that claimant had good cause to file late applications for review in these cases, her late applications would still be dismissed because she did not file her late applications within seven days of the date the circumstances that prevented a timely filing ceased to exist. Assuming that claimant's lack of understanding about the purpose or use of filing applications for review of Hearing Decisions 17-UI-98118 and 17-UI-98119 was the circumstance that prevented her from filing them, and assuming that that might have amounted to "good cause," those circumstances ended during the hearing on February 12th when the ALJ explained the situation to her. She did not file her late applications for review until eleven days later, on February 23rd. Because claimant waited longer than seven days after the circumstances that prevented a timely filing to file her late applications for review, the filings were not within "a reasonable time," and must be dismissed for that reason, as well.

Because claimant's late applications for review are dismissed, Hearing Decisions 17-UI-98118 and 17-UI-98119, which denied claimant's late requests to reopen the June 29th hearings on decisions # 120315 and 120922, are final. Decisions # 120315 and 120922 are also, therefore, final as a matter of law.

Overpayment. 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.*

As a matter of law, claimant did not actively seek work during the weeks at issue, and therefore was not eligible to receive the \$1,653 in unemployment insurance paid to her. The Department paid those benefits to claimant based in part upon her reports that she actively sought work during the weeks at issue. Regardless whether or not claimant knew it at the time, her reports that she actively sought work were false as a matter of law. Regardless of claimant's knowledge or intent in making false reports to the Department about her work search activities, she is nevertheless liable to repay the overpaid benefits to the Department, or to have them deducted from future benefits otherwise payable to her.

DECISION: Claimant's late applications for review of Hearing Decisions 17-UI-98118 and 17-UI-98119 are dismissed; Hearing Decisions 17-UI-98118 and 17-UI-98119 therefore remain undisturbed. Hearing Decision 18-UI-103580 is affirmed.

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

DATE of Service: March 2, 2018

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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