

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0606

Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On March 8, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that during each of the weeks including March 5 through April 29, 2017 (weeks 10-17 through 17-17) claimant misreported her earnings when filing her claims for benefits, received \$3,051 in benefits to which she was not entitled and was liable to repay that amount to the Department (decision # 193442). Claimant filed a timely request for hearing. On May 11, 2018, ALJ Janzen conducted a hearing, continued on May 15, 2018, and on May 17, 2018 issued Order No. 18-UI-109593, affirming the Department's decision.

To be considered timely, the filing deadline for claimant's application for review of Order No. 18-UI-109593 was June 6, 2018. Claimant mailed her application for review to the Employment Appeals Board (EAB), as demonstrated by the stamped envelope; the envelope was not, however, postmarked. OAR 471-041-0065(2) provides that where the postmark date is "missing or unclear," "the filing date is the date that EAB determines to be the most probable date of filing." In this case, claimant signed and dated the application for review form on May 23, 2018, and EAB received the form in the mail on June 15, 2018. Although first class domestic mail sent through the U.S. Postal Service is typically estimated to take only 1-3 days after mailing to be delivered,¹ there have been a number of circumstances in recent months in which items addressed to EAB have taken more than a week after the postmark date to arrive

¹ We take notice of this generally cognizable fact. See <https://www.usps.com/ship/first-class-mail.htm>. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

in the EAB office.² We therefore conclude that claimant most probably mailed her application for review more than 1-3 days prior to its June 15th receipt by EAB. It is most probable that claimant placed her application for review in a stamped office at some point in time between May 23, 2018 and June 6, 2018, and for reasons unknown the application for review took approximately 9 days to arrive in EAB's office. Because a mailing prior to June 6, 2018 would be a timely application for review, we conclude that it is most probable that claimant filed her application for review in a timely manner and is entitled to have EAB review the merits of Order No. 18-UI-109593.

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: Order No. 18-UI-109593 is affirmed.

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

DATE of Service: July 9, 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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² We take notice of this fact, which is within EAB's specialized knowledge. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.