

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0637

Reversed & Remanded

PROCEDURAL HISTORY: On April 27, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant underreported her earnings from work for the employer and therefore was overpaid \$2,250 in benefits that she must repay the Department (decision # 194649). Claimant filed a timely request for hearing. On May 29, 2018, ALJ Janzen conducted a hearing, and on May 31, 2018 issued Order No. 18-UI-110394, affirming the Department's decision. On June 20, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

In her application for review, claimant asked EAB to allow her to submit her paystubs for weeks at issue in this case, asserting that she did not have them at the time of the hearing and had since obtained them. Claimant further asserted that her paystubs would prove the employer incorrectly reported her earnings, and that Order No. 18-UI-110394 therefore was incorrect. On July 18, 2018, claimant provided EAB copies of her paystubs for weeks at issue, and again asked EAB to consider them. Claimant asserted that she did not offer her paystubs into the hearing record because she was paid by direct deposit and did not receive physical paystubs, and the employer would not provide her any information prior to the hearing. Claimant further asserted that after the hearing she was able to contact the employer's new payroll employee, who was able to allow claimant access to her paystubs online.

Information not received into evidence at the hearing typically will not be considered on review. OAR 471-041-0090 (October 29, 2018). However, subject to notice and an opportunity to be heard, new information may be considered when the party offering the information establishes that the new information is relevant and material to EAB's determination, and factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing. OAR 471-041-0090(2).

Here, claimant's paystubs are relevant and material to EAB's determination of whether she underreported her earnings for weeks at issue in this case, and therefore to what extent, if any, she was overpaid benefits for each of those weeks. The employer's failure to allow claimant access to her paystubs online until after the hearing was a factor or circumstance beyond claimant's reasonable control that prevented her from offering her paystubs into the hearing record. Claimant's request for

consideration of her paystubs therefore is allowed. The documents claimant submitted on July 18, 2018 therefore are marked and admitted into the record as EAB Exhibit 1. A copy of EAB Exhibit 1 is being mailed to the parties with of this decision. Any party that objects to our admitting EAB Exhibit 1 into the record 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. Unless such objection is received and sustained, EAB Exhibit 1 will remain in the record.

Due process of law requires an opportunity for the Department and the employer to respond to claimant's new information regarding her earnings during weeks at issue in this case. Order No. 18-UI-110394 therefore is reversed, and this matter remanded to the Office of Administrative Hearings (OAH) for another hearing on the merits of decision # 194649. The hearing should include a full and fair inquiry into the accuracy of claimant's paystubs, and any discrepancies between them and the employer's records and the information the employer reported to the Department. The hearing also should include a full and fair inquiry into any other facts necessary for a determination whether claimant underreported her earnings for the weeks at issue in this case, and to what extent, if any, she was overpaid benefits for each of those weeks.

DECISION: Order No. 18-UI-110394 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: July 20, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-110394 or return this matter to EAB. Only a timely application for review of the subsequent Order will cause this matter to return to EAB.

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