

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0596**

*Affirmed*  
*Late Request for Hearing Dismissed*  
*Overpayment Assessed*

**PROCEDURAL HISTORY:** On August 19, 2014, the Oregon Employment Department (Department) served notice of a decision (# 80333) concluding that claimant failed to file his claim in accordance with the rules prescribed by the Director of the Department. On August 22, 2014, the Department served notice of an administrative decision (# 114912) concluding that claimant was not able to work from July 20, 2014 through August 16, 2014 (weeks 30-14 through 33-14). On September 8, 2014, decision #80333 became final with no request for hearing having been filed. On September 11, 2014 decision #114912 became final with no request for a hearing having been filed.

On September 30, 2014, the Department served notice of a decision (#92536) concluding that claimant had been overpaid \$1,098 in benefits to which he was not entitled. On October 20, 2014, decision #92536 became final with no request for a hearing having been filed.

On January 15, 2015, claimant filed late requests for hearing on decisions # 80333, the decision concluding claimant did not file his claim in accordance with Department rules, and #114912, the decision concluding claimant was not able to work. On January 30, 2015, ALJ Kangas issued two Hearing Decisions, 15-UI-32669 and 15-UI-32670, dismissing claimant's hearing requests on decisions # 114912 and # 80333 as untimely, subject to claimant's "right to renew" his requests by submitting an "Appellant Questionnaire" within 14 days of the date on which the decisions were mailed.<sup>1</sup> On February 17, 2015, the Office of Administrative Hearings (OAH) received claimant's late responses to the "Appellant Questionnaires" regarding decisions #114912 and #89333. By letters dated March 30 2015, OAH informed claimant that his response to the "Appellant Questionnaires" would not be considered because it was late and that Hearing Decisions 15-UI-32669 and 15-UI-32670, dismissing claimant's late requests for hearing, remained in effect.

<sup>1</sup> Hearing Decisions 15-UI-32669 and 15-UI-32670.

Also on March 30, 2015, ALJ Kangas issued Hearing Decision 15-UI-35961,<sup>2</sup> dismissing claimant's hearing request on decision # 92536 (the overpayment decision) subject to claimant's "right to renew" his request by submitting an "Appellant Questionnaire" within 14 days of the date on which the decision was mailed. On April 7, 2015, claimant submitted his response to the "Appellant Questionnaire" concerning his request for a hearing on decision # 92536, the overpayment decision.

On April 8, 2015, claimant filed applications for review of Hearing Decisions 15-UI-32669 and 15-UI-32670 with the Employment Appeals Board (EAB). On April 14, 2015, EAB issued Appeals Board Decisions 2015-EAB-0407 and 2015-EAB-0408 in which it affirmed Hearing Decisions 15-UI-32699 and 15-UI-32670, the decisions dismissing as untimely claimant's requests for hearings on administrative decisions #80333 and #114912.

Also on April 14, 2015, OAH issued a letter in which it cancelled and vacated Hearing Decision 15-UI-35961, the decision dismissing as untimely claimant's request for a hearing on decision # 92536, the overpayment decision. On April 29, 2015, ALJ Wyatt held an interpreted hearing on claimant's request for a hearing on the overpayment decision #92536, and on May 5, 2014, issued Hearing Decision 15-UI-37976, dismissing as untimely claimant's request for a hearing on this decision. On May 20, 2015, claimant filed an application for review of Hearing Decision 15-37976.

**FINDINGS OF FACT:** (1) Claimant is a native Arabic speaker, and relies on his children for assistance for interpretation.

(2) Claimant received decision #92536 and showed it to his son, who told claimant that the Department wanted claimant to repay unemployment benefits he had received.

(3) Sometime after October 20, 2014, claimant contacted the Department and asked for a face-to-face hearing. Claimant was told that he would receive a telephone hearing. Transcript at 10.

**CONCLUSION AND REASONS:** Claimant's request for a hearing on decision # 92536 was not timely filed and he has not shown good cause for extending the filing deadline.

Under ORS 657.269, a request for hearing on an administrative decision must be filed within 20 days from the date on which the decision was mailed to the last known address of a party. This 20-day time limit can be extended a reasonable time upon a showing of good cause. ORS 657.875 "Good cause" exists if the party's actions, delay or failure to act is caused by an excusable mistake or factors beyond the party's reasonable control. OAR 471-040-0010(1) (February 10, 2012).

Here, claimant provided no reason why he did not timely his request for a hearing on decision #92536, the overpayment decision. Claimant's limited English proficiency could not have prevented him from acting: claimant admitted his son interpreted and explained the consequences of the decision for him. Based on this record, we have no reason to conclude that claimant's failure to promptly request a

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<sup>2</sup> On April 6, 2015, claimant filed an application for review of Hearing Decision 15-UI-35961 with EAB. By letter dated April 14, 2015, EAB dismissed this application for review because claimant had initiated additional proceedings at OAH and the matter was not ripe for review.

hearing on the overpayment decision was caused by circumstances beyond claimant's reasonable control or an excusable mistake. We agree with the ALJ that the request for hearing must be dismissed.

**DECISION:** Hearing Decision 15-UI-37976 is affirmed.

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

**DATE of Service: June 2, 2015**

**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](http://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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