

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0709

Late Requests for Hearing Dismissed
Disqualifications
Overpayment and Penalties Assessed

PROCEDURAL HISTORY: On November 19, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision #94711). On December 9, 2014, decision #94711 became final without a request for hearing having been filed. On December 31, 2014, the Department served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision #92023). On January 13, 2015, the Department issued an administrative decision (decision #203255) assessing a \$1,098 overpayment, a \$219.60 monetary penalty and 9 penalty weeks. On January 20, 2015, decision #92033 became final without a request for hearing having been filed. On February 2, 2015, decision #203255 became final without a request for hearing having been filed.

On April 6, 2015, claimant filed untimely appeals on all three decisions. On April 9, 2015 ALJ Kangas issued Hearing Decisions 15-UI-36635, 15-UI-36633, and 15-UI-36628, dismissing claimant's hearing requests subject to claimant's right to renew these requests by filing responses to an appellant questionnaire within 14 days of the date on which the decisions were mailed. Claimant filed timely responses to the appellant questionnaires. By letters dated May 11, 2015, the Office of Administrative Hearings (OAH) cancelled Hearing Decisions 15-UI-36635, 15-UI-36633 and 15-UI-36628.

On May 19, 2015, ALJ Vincent conducted hearings, and on May 27, 2015, issued the following three hearing decisions: Hearing Decision 15-UI-39101, dismissing as untimely claimant's request for a hearing on decision #97411; Hearing Decision 15-UI-39107, dismissing as untimely claimant's request for a hearing on decision #92023; and Hearing Decision 15-UI-39106, allowing claimant's late request

for hearing on decision #203255, the overpayment decision, and affirming that decision. On June 9, 2015, claimant filed an application to review all three hearing decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-39101, 15-UI-39106 and 15-UI-39107. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2015-EAB 0709, 2015-EAB-0710 and 2015-EAB-0711).

FINDINGS OF FACT: (1) Claimant filed claims for unemployment benefits for weeks 41-14 and 42-14 (October 5, through 18, 2014). She stopped claiming, however, because the Department denied her benefits for those weeks.

(2) The Department mailed administrative decisions #94711, #92023 and #203255 to claimant at the following address: 10425 SW Laurel Rd., Apt. 27, Beaverton OR 97005. Claimant did not receive these decisions, however. Claimant moved to Redmond, Oregon at the end of December 2014. She notified the U.S. Postal Service of her address change, but did not notify the Department of her address change. Because she was no longer claiming unemployment benefits, she believed it was unnecessary to notify the Department of her new address.

(3) During the first week of March 2015, claimant received a billing statement from the Department for the money she owed the Department as a result of decision #203255. Claimant contacted the Department and spoke to a representative who told her to disregard the statement. Claimant received a second billing statement during March 2015. Sometime during the week of March 22 through 28, 2015, she spoke to a Department representative who told her about administrative decisions #94711, #92023 and #203255, and advised her about the need to file late requests for hearing. Audio in 2015-UI-31810 at 13:39.

CONCLUSION AND REASONS: Claimant's hearing requests must be dismissed as untimely.

Under ORS 657.269, a request for hearing on an administrative decision must be filed within 20 days of the date on which the decision was mailed to a party's last known address. The 20-day time limit can be extended "a reasonable time" upon a showing of good cause, which exists when the failure to timely file is caused by an excusable mistake or circumstances beyond the party's reasonable control. ORS 657.875; OAR 471-040-0010(1) (February 10, 2012). A "reasonable time" is defined as "seven days after the circumstances that prevented a timely filing ceased to exist." OAR 471-040-0010(3).

Claimant did not timely file requests for hearing on the administrative decisions sent in December 2014 and January 2015 at issue because she did never received them – they were sent to an address where she no longer lived. Claimant did not notify the Department of her new address because she believed it was unnecessary to do so since she was no longer claiming unemployment benefits. Claimant only learned about the decisions after she contacted a Department representative in March to discuss a billing statement she had received. Claimant's failure to timely file hearing requests was thus caused by an excusable mistake – her reasonable belief that she did not need to inform the Department of her new address.

Claimant did not, however, file her hearing requests within a reasonable time after the circumstances that prevented her timely filing ceased to exist. Claimant spoke with a Department representative who told her about the decisions during the last week of March 2015. As a result, claimant knew about the need to request a hearing on these decisions by March 28 at the latest. Claimant did not file her hearing request until April 6, 2015 – more than seven days after she was notified of the need to do so.

Claimant's requests for hearing on decisions #94711, #92023 and #203255 are dismissed as untimely, and these decisions remain undisturbed.

DECISION: Hearing Decisions 15-UI-39101 and 15-UI-39107 are affirmed, and Hearing Decision 15-UI-39106 is modified.

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

DATE of Service: July 31, 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. 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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