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

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EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0854

Affirmed

*Late Request for Hearing Denied – Ineligible January 18, 2015 to March 28, 2015
Overpayment Assessed*

PROCEDURAL HISTORY: On April 8, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not eligible for benefits from January 18, 2015 through March 28, 2015 (decision # 80045). On April 28, 2015, decision # 80045 became final without a request for hearing having been filed. On May 13, 2015, the Department served notice of an administrative decision assessing a \$3,968 overpayment based on decision # 80045 (decision # 133515). On May 21, 2015, claimant filed a late request for hearing on decision # 80045 and a timely request for hearing on decision # 133515.

On June 2, 2015, ALJ Kangas issued Hearing Decision 15-UI-39435, dismissing claimant's late request for hearing on decision # 80045 subject to claimant's right to renew his request by responding to an appellant questionnaire within 14 days of the date the decision was mailed. On June 12, 2015, the Office of Administrative Hearings (OAH) received claimant's response. On June 17, 2015, ALJ Kangas issued Hearing Decision 15-UI-40226, re-dismissing claimant's late request for hearing on decision # 80045.

On July 6, 2015, ALJ Seideman conducted a hearing on claimant's request for hearing on decision # 133515. On July 7, 2015, Hearing Decision 15-UI-40226 became final without an application for review having been filed. On July 9, 2015, ALJ Seideman issued Hearing Decision 15-UI-41302, affirming decision # 133515. On July 13, 2015, claimant filed a late application for review of Hearing Decision 15-UI-40226 and a timely application for review of Hearing Decision 15-UI-41302.

Claimant filed a late application for review of Hearing Decision 15-UI-40226 because, for unknown reasons, EAB's fax machine did not answer claimant's calls when he attempted to fax his timely application for review.¹ The time period for filing an application for review may be extended a

¹ Claimant submitted evidence of three timely attempts to fax his application for review including evidence that at least two attempts failed because EAB's fax machine did not answer the calls. Claimant's documents are admitted into the record as

"reasonable time" if the individual shows "good cause" for the late filing. OAR 471-041-0070 (October 29, 2006). The failure of EAB's fax machine to answer claimant's calls constituted a factor or circumstance beyond claimant's reasonable control that prevented a timely filing. Claimant filed his late application for review within 7 days of the date that those circumstances ceased to exist, so his late filing was filed within a reasonable time. Claimant's late application for review is, therefore, allowed.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-40226 and 15-UI-41302. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-0854 and 2015-EAB-0855).

In his written argument, claimant, referring to the overpayment and the decision that created it, wrote, in pertinent part, "This is not right. I have not been given any opportunity to contest this." However, claimant did not dispute that he received the \$3,968 in unemployment insurance benefits for the weeks including January 18, 2015 through March 28, 2015. The record shows that the Department mailed claimant notice of the decision concluding he was not available for work, and, therefore, not eligible for benefits, during those same weeks. That decision stated, in capital, bold and underlined letters, that, as a result of the decision, "benefits are denied" for the referenced period, that the decision "may create an overpayment if you were previously allowed benefits," and that if he disagreed with the decision he could appeal it. *See* Decision # 80045. In other words, the record shows that claimant was notified of the Department's adverse decision, notified that it might create an overpayment, and was given an opportunity to contest the Department's decision to deny him benefits for the period identified in the decision. Claimant chose not to do so. Unfortunately, the fact that claimant chose not to pursue his opportunity to contest the decision that created the overpayment until the time period during which he could have done so passed does not mean that the opportunity to contest it did not exist, and, as held in Hearing Decision 15-UI-40226, claimant has not shown good cause to extend that time period.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decisions under review are **adopted**.

DECISION: Hearing Decisions 15-UI-40226 and 15-UI-41302 are affirmed.

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

DATE of Service: July 20, 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

EAB Exhibit 1 to complete the record. 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 at EAB Exhibit 1.

‘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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