

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0911

Affirmed
Overpayment Assessed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On May 4, 2015, the Oregon Employment Department (the Department) served notice of the following administrative decisions: #135525, concluding that claimant was not able to work from March 22 through April 4, 2015 (weeks 12-15 and 13-15); #134202, concluding that claimant voluntarily left her job with McDonald's without good cause during the week of March 1 through 7, 2015 (week 09-15); and #134919, concluding that claimant voluntarily left her job with Platinum Elite Distribution on March 15, 2015 without good cause. On May 25, 2015, all three decisions became final without requests for hearing having been filed.

On June 10, 2015, the Department served notice of an administrative decision (#133350) assessing a \$1,356 overpayment, based on decision #134202. On June 17, 2015, claimant filed late requests for hearing on decisions #135525, #134919 and 134202. On June 18, 2015, claimant filed a timely hearing request on decision #133350. On June 24, 2015, ALJ Kangas issued Hearing Decision 15-UI-40570, dismissing claimant's request for hearing on decision #135525, subject to claimant's right to renew the hearing request by submitting an appellant questionnaire attached to the decision within 14 days. On June 25, 2015, ALJ Kangas issued Hearing Decision #15-UI-40691, dismissing claimant's request for hearing on decision #134919, subject to claimant's right to renew the hearing request by submitting an appellant questionnaire attached to the decision within 14 days.

By letter dated June 30, 2015, the Office of Administrative Hearings (OAH) acknowledged that claimant had timely submitted the appellant questionnaire attached to Hearing Decision #15-UI-40691, and cancelled that hearing decision.¹ On July 9, 2015, ALJ Murdock conducted hearings on claimant's late requests for hearing on decisions #134919 and 134202, and a hearing on decision #133350. On July 14, 2015, Hearing Decision 15-UI-40570 became final without an application for review having been filed.

¹ OAH never acknowledged that claimant returned the appellant questionnaire attached to Hearing Decision 15-UI-40570, and never issued a letter cancelling that decision. We also note that there are no copies of the appellant questionnaire in any of the case records at issue.

On July 16, 2015, ALJ Murdock issued Hearing Decision 15-UI-41555, dismissing claimant's late request for hearing on decision #134202; Hearing Decision 15-UI-41558, dismissing claimant's late request for hearing on decision #134919; and Hearing Decision 15-UI-41461, affirming decision #133350 (the overpayment decision). On July 28, 2015, claimant filed an untimely application for review of Hearing Decisions 15-UI-40570, and timely applications for review of Hearing Decisions 15-UI-41561, 15-UI-41558, and 15-UI-41555.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-40570, 15-UI-41561, 15-UI-41558, and 15-UI-41555. For case-tracking purposes, this decision is being issued in quadruplicate (EAB Decisions 2015-EAB-0908, 2015-EAB-0909, 2015-EAB-0910 and 2015-EAB-0911).

FINDINGS OF FACT: (1) On September 15, 2014, claimant filed an initial claim for unemployment benefits. A weekly benefit amount of \$339 was established.

(2) Claimant claimed benefits for weeks 9-15 through 12-15 (March 1 through 28, 2015) and the Department paid her \$1,356 in benefits for these weeks. When claimant filed her claim for each of these weeks, she reported that she had not quit a job.

(3) Claimant received the following decisions soon after the Department mailed them on May 4, 2015: #135525, concluding that claimant was not able to work from March 22 through April 4, 2015 (weeks 12-15 and 13-15); #134202, concluding that claimant voluntarily left her job with McDonald's without good cause during the week of March 1 through 7, 2015 (week 9-15); and #134919, concluding that claimant voluntarily left her job with Platinum Elite Distribution without good cause on March 15, 2015. At the time she received the decisions, claimant was working. She concluded that because she did not need and was not claiming unemployment benefits, she had no reason to appeal the decisions. Claimant did not read the following language included in decision #134202: "NOTICE: This decision creates an overpayment if claimant was paid benefits for any week covered by this decision."

(4) After claimant received Hearing Decision 15-UI-41461, concluding that she had been overpaid benefits for weeks 9-15 through 12-15, she called the Department to ask why. A Department representative notified claimant about the three decisions issued on May 4, 2015 that had become final because claimant had not requested hearings. Claimant then requested hearings on the three decisions.

CONCLUSION AND REASONS: We conclude that claimant failed to demonstrate good cause for filing late requests for hearing on decisions #135525, #134919 and #134202. We also conclude that claimant was overpaid \$1,356 in benefits and must repay this amount to the Department or have this amount deducted from future benefits.

As a preliminary matter, we first determine whether claimant demonstrated good cause for filing an untimely application for review of Hearing Decision 15-UI-40570. EAB may extend the 20-day period for filing an application for review upon a showing of good cause. Here, the record demonstrates good cause for extending the filing period. The appellant questionnaires that were attached to Hearing Decisions 15-UI-40570 and 15-UI-40691 are missing from the records in these two cases. In its June 30, 2015 letter, however, OAH acknowledged receipt of an appellant questionnaire and found claimant's

response sufficient to cancel Hearing Decision 15-UI-40691 and schedule a hearing on the timeliness of that hearing request. Based on these facts, we reasonably infer that claimant also submitted an appellant questionnaire in response to Hearing Decision 15-UI-40570, which included the same explanation for her late hearing request that she provided in her response to Hearing Decision 15-UI-40691. OAH's mistake in failing to acknowledge this questionnaire, cancel Hearing Decision 15-UI-40570, and schedule a hearing was a circumstance beyond claimant's control and constitutes good cause for her untimely filing of her application for review.

Untimely Hearing Requests

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 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). Good cause does not include not understanding the implications of a decision or notice when it is received. OAR 471-040-0010(1)(b)(B). Claimant did not file her requests for hearing on the three administrative decisions because she believed it was unnecessary for her to do so because she was working and no longer claiming benefits. Claimant did not read the decision that concluded she voluntarily left work during week 09-15 without good cause and note that it created an overpayment if she had received benefits for any week covered by the decision. It was well within claimant's reasonable control, and not a mistake that can be excused, to carefully read the decision. Claimant's failure to understand the implications of decisions #135525, 134919, and 134202 does not constitute good cause for her untimely hearing requests. Claimant's requests for hearing therefore are dismissed, and decisions #135525, 134919 and 134202 remain undisturbed.

Overpayment

For the reasons discussed above, we have dismissed claimant's request for a hearing on decision #134202 that concluded claimant voluntarily left her job with McDonald's without good cause during the week of March 1 through 7, 2015 (week 09-15). The conclusion reached in that administrative decision has thus become final as a matter of law. The statement claimant made to the Department when she claimed benefits for weeks 09-15 – that she had not quit a job – was a misrepresentation that was material to her eligibility for unemployment benefits. Claimant is liable to repay the benefits she received for weeks 09-15 through 12-15, or have the amount of these benefits deducted from future benefits. ORS 657.310(1).

DECISION: Hearing Decisions 15-UI-41555, 15-UI-41558, 15-UI-41561 and 15-UI-40570 are affirmed.

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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