

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1212

Affirmed
Request for Hearing Dismissed

PROCEDURAL HISTORY: On July 1, 2014, the Oregon Employment Department (the Department) mailed to claimant's address notice of an administrative decision concluding that claimant willfully failed to report earnings from late December 2013 through early April 2014 to obtain benefits, and therefore must repay \$1,936 in benefits, is disqualified for 15 weeks of future benefits, and must pay a \$580 monetary penalty (decision # 202959).

On July 17, 2014, the Department mailed to claimant's address notice of an administrative decision concluding that claimant is not eligible for benefits from June 29, 2014 through August 30, 2014 (decision # 164842). On September 5, 2014, claimant filed a request for hearing on decision # 164842. On September 12, 2014, ALJ Kangas issued Hearing Decision 14-UI-25063, dismissing claimant's request for hearing as untimely, subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days after the date the hearing decision was mailed. On December 30, 2014, claimant faxed his response to the Office of Administrative Hearings (OAH). On April 28, 2015, ALJ Kangas issued a letter stating that because his response was not filed within the designated time period, OAH would not consider the response or issue another order regarding the matter, and that Hearing Decision 14-UI-25063 remained in effect.

On July 28, 2015, claimant filed a request for hearing on decision # 202959. On August 6, 2015, ALJ Kangas issued Hearing Decision 15-UI-42626, dismissing claimant's request for hearing as untimely, subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days after the date the hearing decision was mailed. On August 18, 2015, claimant mailed his response to OAH. On August 31, 2015, OAH issued a letter stating that Hearing Decision 15-UI-42626 was cancelled and vacated, and that a hearing would be scheduled on claimant's request for hearing. On September 17, 2015, ALJ S. Lee conducted a hearing, and on September 21, 2015 issued Hearing Decision 15-UI-44553, dismissing claimant's request for hearing. On October 9, 2015, claimant filed an application for review of with the Employment Appeals Board (EAB).

FINDINGS OF FACT: Decision # 202959 stated that its “Date Final” was “07/21/14,” and that to be timely, any appeal from the decision had to be filed “on or before July 21, 2014.” Decision # 202959 at 1. Claimant agreed with the Department’s conclusion that he was overpaid benefits, but disagreed with its conclusion that he willfully underreported earnings to obtain those benefits. However, claimant decided not to request a hearing on decision # 202959. He instead decided to offset the overpayment and penalties by claiming benefits for weeks beginning July 5, 2014, for which he believed he was eligible even after he received decision # 164842, which concluded that he was not eligible for benefits from July 5 through August 30, 2014. Claimant therefore did not request a hearing on decision on or before July 21, 2014.

CONCLUSIONS AND REASONS: Claimant filed a late request for hearing on decision # 202959 without good cause, and his request therefore is dismissed.

An administrative decision issued by the Department becomes final unless a request for hearing is filed within 20 days after the date the decision was mailed to a party’s last known address. ORS 657.269. This 20-day time limit may be extended a reasonable time upon a showing of good cause. ORS 657.875. “Good cause” exists when a party’s failure to timely file results from an excusable mistake or from factors beyond the party’s reasonable control. 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).

In the present case, claimant failed to file a timely request for hearing on decision # 202959 because he instead decided to offset the overpayment and penalties by claiming benefits for weeks beginning July 5, 2014, for which he believed he was eligible even after he received decision # 164842, which concluded that he was not eligible for benefits from July 5 through August 30, 2014. It therefore was within claimant’s reasonable control to file a request for hearing on decision # 202959. Under OAR 471-040-0010(1)(b)(B), claimant’s apparent misunderstanding of the implications of decisions # 202959 and # 164842 when received does not constitute good cause. His failure to file a timely request for hearing on decision # 202959 therefore was not the result of an excusable mistake, as contemplated under OAR 471-040-0010(1).

Claimant’s request for hearing on decision # 202959, therefore, is dismissed.

DECISION: Hearing Decision 15-UI-44553 is affirmed.

Susan Rossiter and J. S. Cromwell.

DATE of Service: November 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. 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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