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

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MC 010.05

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1248

Affirmed
Late Request to Reopen Denied
Ineligible
Overpayment Assessed

PROCEDURAL HISTORY: On July 1, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from May 3, 2015 to May 16, 2015 and May 24, 2015 to June 6, 2015 (decision # 80001). On July 3, 2015, claimant filed a timely request for hearing. On July 20, 2015, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for July 31, 2015 at 12:00 p.m. On July 31, 2015, ALJ Wyatt issued Hearing Decision 15-UI-42437, dismissing claimant's request for hearing on decision # 80001 for failure to appear at the scheduled hearing. On August 20, 2015, Hearing Decision 15-UI-42437 became final without claimant having filed an application for review or request to reopen. On September 1, 2015, the Department served notice of an administrative decision assessing a \$2,196 overpayment based on decision # 80001 (decision # 132327). On September 9, 2015, claimant filed a timely request for hearing on decision # 132327. Also on September 9, 2015, claimant re-requested a hearing on decision # 80001, which was construed and processed by OAH as a request to reopen the July 31, 2015 hearing. On October 6, 2015, ALJ Monroe conducted one hearing on claimant's reopen request and a second hearing on decision # 132327. On October 9, 2015, the ALJ issued Hearing Decision 15-UI-45694, denying claimant's request to reopen the July 31, 2015 hearing, and Hearing Decision 15-UI-45696, affirming the Department's assessment of a \$2,196 overpayment in decision # 132327. On October 16, 2015, claimant filed applications for review of both hearing decisions with the Employment Appeals Board (EAB).

In claimant's written argument, he argued that his late request to reopen should be allowed because not receiving his mail was "completely out of my hands and I have no control over that." Notably, more than two months passed between the date claimant requested a hearing on decision # 80001 and the date of his late request to reopen, during which claimant did not check on his request for hearing to determine whether it was received or being processed. Moreover, under OAR 137-003-0520(10), the law presumes that documents sent through the U.S. Postal Service are received by the addressee, subject to evidence of non-receipt. In this instance, claimant testified that he might not have received the notice of

hearing or hearing decision dismissing his request for hearing for failure to appear, but acknowledged that those documents might well have been delivered to his house and then misplaced or discarded by someone else in his household. Therefore, claimant has not established that the documents mailed to him regarding this matter were not delivered by the U.S. Postal Service. Nor has he established that his failure to receive the documents, and either attend the hearing or timely request reopening, were the result of factors outside his control or an excusable mistake.

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

DECISION: Hearing Decisions 15-UI-45694 and 15-UI-45696 are affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: October 27, 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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