

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0057

Reversed
Late Request for Hearing Allowed

PROCEDURAL HISTORY: On March 20, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 105119) concluding that claimant did not actively seek work from March 8 through March 14, 2015 (week10-15). On April 9, 2015, decision # 105119 became final without an appeal having been filed. On April 13, 2015, the Department served notice of an administrative decision (decision # 74320) concluding that claimant did not actively seek work from March 15 through April 4, 2015 (weeks 11-15 through 13-15). On May 4, 2015, decision # 74320 became final without an appeal having been filed.

On November 12, 2015, claimant filed late hearing requests on decisions # 105119 and # 74320. On November 19, 2015, ALJ Kangas issued Hearing Decisions 15-UI-47985 and 15-UI-47986, dismissing claimant's hearing requests as untimely, subject to his right to renew the requests by responding to appellant questionnaires within 14 days. Claimant timely responded to the appellant questionnaires. By letters dated December 10 and December 14, 2015, the Office of Administrative Hearings (OAH) cancelled Hearing Decisions 15-UI-47986 and 15-UI-47985.

On December 29, 2015, ALJ Murdock conducted a consolidated hearing and on December 31, 2015, issued the following hearing decisions: Hearing Decision 15-UI-50297 re-dismissed claimant's request for hearing on decision # 105119 as untimely, and Hearing Decision 15-UI-50298 re-dismissed claimant's request for hearing on decision # 74320 as untimely. On January 13, 2016, claimant filed applications for review of both 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-50297 and 15-UI-50298. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0056 and 2016-EAB-0057).

FINDINGS OF FACT: (1) On December 28, 2014, claimant filed an initial claim for unemployment benefits. He mistakenly entered the following as his address of record in the Department's on-line claim system: 2160 WE Lauren Dr. in Prineville, Oregon. Claimant's correct address was: 2160 SE Lauren Dr. in Prineville, Oregon.

(2) On January 4, 2016, claimant changed his address of record with the Department to the following: 2160 SE Lauren Dr. #WE in Prineville, Oregon.

(3) Claimant's neighbor lived at 2160 SE Mountain Ash in Prineville. Claimant's mail was often mistakenly delivered to this address. Although claimant's wife spoke to the letter carrier and visited the local post office, the problem of miss-delivered mail persisted.

(4) In February 2015, claimant received two letters of inquiry from the Department at his address of record, 2160 SE Lauren Dr. #WE in Prineville.

(5) Claimant never received administrative decisions # 105119 and # 74320 when the Department issued them in March and April 2015.

(6) On November 4, 2015, the Department issued a billing statement to claimant for an overpayment of unemployment benefits in the amount of \$527.26. Audio Recording at 35:51. The statement was sent to claimant at the following address: 2160 SE Lauren Dr. #WE in Prineville, Oregon. Claimant received the billing statement, but did not understand why had received it.

(7) On November 12, 2015, claimant and his wife called the Department, and learned about administrative decisions # 105119 and # 74320. Claimant requested hearings on these decisions, and also corrected his address of record with the Department to: 2160 SE Lauren Dr. in Prineville.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that claimant has shown good cause for filing a late hearing request. Claimant is entitled to a hearing on the merits of decisions # 105119 and # 74320.

Under ORS 657.269, a Department decision 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. 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). A "reasonable time" is defined as seven days after the circumstances that prevented a timely filing cease to exist. OAR 471-040-0010(3).

In Hearing Decisions 15-UI-50297 and 15-UI-50298, the ALJ noted that claimant received documents from the Department, even though he had provided the Department with an incorrect address of record. She also noted that documents sent through the U.S. mail are presumed to have been received by the addressee. *See* OAR 137-003-0520 (January 31, 2012). She then found that claimant's testimony – that

he never received administrative decisions # 105119 and # 74320 – was not credible and “self-serving.” Hearing Decision 15-UI-50297 at 3. Based on this determination, she concluded that claimant received the decisions at issue soon after they were mailed and that he did not establish that his failure to timely file his hearing requests resulted from an excusable mistake or factors beyond his reasonable control. *Id.* We disagree.

Claimant provided evidence to rebut the presumption that the decisions at issue were delivered to his address: he and his wife testified that mail often was often miss-delivered to a neighbor’s address. The ALJ’s determination that claimant was not credible was apparently based on the evidence that he received correspondence from the Department at the incorrect address he had provided to the Department. Claimant’s receipt of *some* mail sent to the incorrect address is not conclusive evidence that he received *all* of his mail sent to this address, however. We therefore conclude that claimant demonstrated that his failure to timely file his hearing requests occurred because he did not receive the decisions due to problems with his mail delivery – a circumstance beyond his reasonable control – problems with mail delivery.

We next determine whether claimant filed his hearing requests within a “reasonable time,” *i.e.*, within seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0010(3). Claimant learned about decisions # 105119 and # 74320 when he received the November 4, 2015 billing notice from the Department; he then filed his hearing requests on November 12, 2015. The record is devoid of evidence regarding the specific date claimant received this billing notice. Assuming that claimant received the billing notice a day or two after it was mailed – on November 5 or 6 – his November 12 hearing requests were made within seven days of receipt of this notice and were therefore filed within a “reasonable time.”

Claimant’s late hearing requests are allowed. He is entitled to hearings on the merits of decision # 105119 and # 74320.

DECISION: Hearing Decisions 15-UI-50297 and 15-UI-50298 are set aside, as outlined above.

Susan Rossiter and J. S. Cromwell

DATE of Service: January 21, 2016

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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