

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0245

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On May 5, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (# 94713) concluding that claimant did not actively seek work from March 8 through April 18, 2015 (weeks 10-15 through 15-15). On May 26, 2015, decision # 94713 became final without a request for hearing having been filed. On June 8, 2015, the Department served notice of an administrative decision (# 154425) concluding that claimant was overpaid \$2,151 in unemployment benefits based on decision # 94713. On June 29, 2015, decision # 154425 became final without a request for hearing having been filed. On September 30, 2015, claimant filed untimely requests for hearing on decisions # 94713 and # 154425. On October 8, 2015, ALJ Kangas issued Hearing Decision 15-U-45629, which dismissed claimant's request for hearing on decision # 94713 as untimely, and Hearing Decision 15-UI-45630, which dismissed claimant's request for hearing on decision # 154425 as untimely. Both decisions specified that the dismissals of his hearing requests were subject to claimant's right to renew the requests by responding to appellant questionnaires within 14 days. Claimant timely responded to the appellant questionnaires.¹ On February 16, 2016, ALJ Kangas conducted hearings, and on February 17, 2016, issued the following hearing decisions: Hearing Decision 16-UI-53098, which re-dismissed claimant's late hearing request on decision # 94713; and Hearing Decision 16-UI-53099, which re-dismissed claimant late hearing request on decision # 154425. On March 1, 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 16-UI-53098 and 16-UI-53099. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0244 and 2016-EAB-0245).

¹ The Employment Appeals Board (EAB) received claimant's responses to the appellant questionnaires on or about October 21, 2015. EAB sent these responses to OAH through the Department's internal mail delivery system. Due to some problem with this internal mail system, OAH never received claimant's responses to the appellant questionnaires. When OAH discovered this situation in January 2016, it accepted claimant's responses to the appellant questionnaires as timely filed and scheduled hearings on claimant's late hearing requests.

FINDINGS OF FACT: (1) From May through July, 2015, claimant had an unstable living situation. Claimant was in the process of divorcing his wife, and lived part of the time in his truck and part of the time with his adult children. Claimant arranged for his mail to be sent to the following address, which was the address of his ex-wife: 11170 SW Apalachee St., Tualatin, OR. Claimant's daughter picked up claimant's mail from his ex-wife, and claimant then went to his daughter's home approximately every two weeks to obtain his mail and visit with his daughter. Audio Recording, Case No. UI-15-40233, at 27:25.

(2) On May 5, 2015, the Department mailed decision # 94713, the decision concerning his work search, to the address of record claimant had provided to the Department, which was the Apalachee St. address. On June 8, 2015, the Department mailed decision # 154425, the overpayment decision, to claimant's address of record. Both these decisions specified the date by which an appeal of the decision must be filed, and included instructions for requesting a hearing by mail, telephone, or fax transmission. Claimant received these decisions sometime prior to June 26, 2015.

(3) On June 26, 2015, claimant called the Department. During this call, claimant asked a Department representative why the Department had determined he was overpaid unemployment benefits, and told the representative that he actively sought work during the time he was unemployed. The Department representative with whom claimant spoke advised claimant to contact the Department adjudicator who issued one of the decisions claimant had received, and gave claimant the phone number of this adjudicator. Claimant did not request a hearing on either decision during this phone call. Audio Recording, Case No. UI-15-40233 at 19:50.

(4) On July 6, 2015, claimant again called the Department. A representative spoke with claimant about the decisions he had received, and told claimant that if he disagreed with the decisions, he could request hearings. Audio Recording, Case No. UI-15-40230 at 17:10.

(5) On September 30, 2015, claimant requested hearings on decisions # 94713 and # 154425.

CONCLUSION AND REASONS: We agree with the ALJ, and conclude that claimant did not file his hearing requests within the 20-day time limit and failed to show good cause for extending this time limit to September 30, 2015.

ORS 657.269 provides that a request for hearing must be filed within 20 days after the administrative decision is 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 if the party shows that the late filing was caused by an excusable mistake or factors or circumstances beyond the party's reasonable control. OAR 471-040-010(1) (February 10, 2012). A reasonable time is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-040-0010(3).

Claimant was uncertain when he received the decisions at issue, which the Department mailed to him on May 5 and June 8, 2015. The record shows, however, that he had received these decisions by June 26, 2015 because he contacted the Department on that date to find out why the Department had concluded he was overpaid unemployment benefits, and also question why the Department concluded he had not actively searched for work. On July 6, 2015, claimant again contacted the Department. On that date, a representative advised claimant that if he disagreed with the decisions, he could request hearings.

We conclude that claimant's failure to file a hearing request within 20 days of the date on which the Department mailed the May 5, 2015 decision to his last known address did not result from circumstances beyond his reasonable control. Claimant attributed his failure to timely file his hearing request on this May 5 decision to the possibility that he did not promptly receive the decision due to the complicated arrangements he had made for receiving his mail. Claimant had his mail sent to his ex-wife's address; his daughter then picked up the mail from claimant's ex-wife, and claimant obtained his mail approximately every two weeks, when he visited his daughter. It was within claimant's reasonable control to make more efficient arrangements for receiving his mail. For example, claimant could have had his mail delivered to the address of one of his adult children with whom he was living part-time. We also conclude that claimant's failure to file a hearing request within 20 days of the date on which the Department mailed the June 8, 2015 decision was not caused by circumstances beyond his reasonable control. Although claimant may have been uncertain when he received this June 8 decision, the record shows that he received it in sufficient time to make a timely hearing request, since he spoke with a Department representative about the decision on June 26. It was within claimant's reasonable control to carefully read the instructions included with the decision, note the deadline for filing his hearing request, and follow the directions for requesting a hearing.

Even if we were to find that claimant's ignorance of his right to request hearings on the decisions at issue – because he did not timely receive the May 5 decision and did not understand the June 8 decision – we would still find that he failed to file his hearing requests within a reasonable time as required by OAR 471-040-0010(3). On July 6, 2015, the circumstances that prevented claimant from timely filing hearing requests ceased to exist because a Department representative told him he should request hearings if he disagreed with the decisions at issue. Claimant did not file his hearing requests until September 30, 2015, however – more than 7 days after he spoke with the Department representative. Claimant could provide no reason why he waited until September 30, 2015 to file his hearing requests.

Claimant did not timely file his hearing requests and failed to demonstrate good cause for his failure to do so until September 30, 2015. Claimant's late hearing requests are therefore dismissed.

DECISION: Hearing Decisions 16-UI-53098 and 16-UI-53099 are affirmed.

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

DATE of Service: March 8, 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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