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

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EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0376

*Hearing Decision 16-UI-55040 Reversed
Late Request for Hearing Allowed*

Hearing Decision 16-UI-55041 Reversed and Remanded

PROCEDURAL HISTORY: On January 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from November 8 through December 12, 2015 (weeks 45-15 through 49-15) (decision # 131513). On February 1, 2016, decision # 131513 became final without a request for hearing having been filed. On February 11, 2016, the Department served notice of an administrative decision, based on decision # 131513, concluding that claimant was overpaid \$2,835 in benefits for weeks 46-15 through 49-15, and must repay that amount to the Department (decision # 153552). On February 16, 2016, claimant filed a late request for hearing on decision # 131513, and a timely request for hearing on decision # 153552. On March 14, 2016, ALJ M. Davis conducted hearings, and on March 15, 2016 issued Hearing Decision 16-UI-55040, dismissing claimant's late request for hearing on decision # 131513, and Hearing Decision 16-UI-55041, affirming decision # # 153552. On April 1, 2016, claimant filed applications for review of Hearing Decisions 16-UI-55040 and 16-UI-55041 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-55040 and 16-UI-55041. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0375 and 2016-EAB-0376). EAB considered the hearing records and claimant's written argument. However, claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) On January 11, 2016, the Department mailed notice of decision # 131513 to his address on record with the Department, which was the house in which claimant resided at the time. The notice was not returned to the Department as undeliverable.

(2) Claimant received mail through a slot directly into the house in which he resided. Since June or July 2015, mail addressed to claimant often was mistakenly delivered to neighbors, and the neighbors' mail mistakenly to claimant mixed. Claimant complained to his local mail carriers when he had the chance, but the mail carriers often changed, and failed to resolve the situation.

(3) In late fall or winter 2015, claimant's address was removed from the house in which he resided before the house was painted. The address was not replaced after the house was painted.

(4) Claimant did not receive notice of decision # 131513 in the mail, and therefore was unaware of the decision until he received decision # 153552 in the mail on February 15, 2016. On February 16, 2016, claimant telephoned the Department and requested a hearing on both decisions.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant had good cause to extend the filing deadline for decision # 131513 to February 16, 2016. Hearing Decision 16-UI-55040 therefore is reversed. Because Hearing Decision 16-UI-55041 was based upon decision # 131513, it must be reversed and remanded pending a decision on the merits of decision # 131513.

ORS 657.269 provides that an individual has 20 days after the date an administrative is mailed to request a hearing. ORS 657.875 provides that deadline may be extended a reasonable time upon a showing of good cause. OAR 471-040-0010 defines "good cause" as an excusable mistake or circumstances beyond an applicant's reasonable control, and "reasonable time" as seven days from the date the circumstances that prevented a timely filing ceased to exist.

In the present case, claimant filed a late request for hearing on decision # 131513 because he did not receive notice of the decision in the mail, and therefore was unaware of the decision until after the deadline for requesting a hearing had expired. Given that notice of the decision was not returned to the Department as undeliverable, it likely was delivered to the wrong address. In Hearing Decision 16-UI-55040, the ALJ acknowledged that claimant had been having difficulty receiving all of his mail for six to seven months, and for several months prior to the address on his house being removed before it was painted.¹ However, the ALJ determined that in failing to replace the address after the house was painted, claimant "may also have been at fault" for his failure to receive notice of decision # 131513, and therefore concluded that claimant failed to establish good cause for filing a late request for hearing.²

However, we find it unlikely that claimant's failure to receive decision # 131513 in the mail was the result of the failure to replace the address on his house. Claimant did not assert, and the record does not show, that he had more difficulty receiving mail after the address was removed. Nor does the lack of an address on claimant's house explain why some of his mail, including decision # 131513, would be delivered to the wrong address, and not returned to the Department as undeliverable. More likely than not, claimant failed to receive decision # 131513 in the mail for the same reason he had been having difficulty receiving his mail for several months before the address on his house was removed—because his local mail carriers mixed his mail in with his neighbors' mail and delivered it to them by mistake, despite claimant's repeated complaints. We therefore disagree with the ALJ and conclude that claimant's failure to receive decision # 131513 in the mail was due to factors beyond his reasonable

¹ Hearing Decision 16-UI-55040 at 1-2, 4.

² *Id.* at 4.

control. Claimant therefore had good cause for filing a late request for hearing on # 131513, and given that he filed his request for hearing one day after becoming aware of the decision, did so within a reasonable period of time after the circumstances that prevented a timely filing ceased to exist.

Claimant therefore had good cause to extend the filing deadline for decision # 131513 to February 16, 2016. Hearing Decision 16-UI-55040 therefore is reversed. Because Hearing Decision 16-UI-55041 was based upon decision # 131513, it must be reversed and remanded pending a decision on the merits of decision # 131513.

DECISION: Hearing Decision 16-UI-55040 is set aside, as outlined above. Hearing Decision 16-UI-55041 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: April 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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