

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0809

Affirmed
Late Request for Hearing Denied

PROCEDURAL HISTORY: On July 13, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 195764) assessing an overpayment of \$6,525, 52 penalty weeks, and a \$1957.50 monetary penalty. On August 3, 2015, decision # 195764 became final without a request for hearing having been filed. Claimant filed an untimely request for a hearing. On May 3, 2016, ALJ Kangas issued Hearing Decision 16-UI-58734, dismissing claimant's request for hearing subject to his right to renew the request by responding to an appellant questionnaire within 14 days of the date on which the hearing decision was mailed. Claimant timely responded to the appellant questionnaire. By letter dated June 15, 2016, the Office of Administrative Hearings cancelled Hearing Decision 16-UI-58734. On June 15, 2016, ALJ S. Lee conducted a hearing, and on June 23, 2016 issued Hearing Decision 16-UI-62448, re-dismissing claimant's request for hearing as untimely. On July 11, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

FINDINGS OF FACT: (1) On January 22, 2015, claimant received decision # 195764. He disagreed with the decision.

(2) On November 4, 2015, the Department sent claimant a billing statement regarding the overpayment assessed in decision # 195764.

(3) On December 30, 2015, claimant requested a hearing on decision # 195764.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant's late request for hearing should be dismissed.

ORS 657.269 requires that parties file a request for hearing within 20 days from the date on which the decision was mailed. In order to be timely, claimant's request for hearing had to be filed no later than

August 3, 2015. At the hearing, claimant testified that on July 22, 2015, he received decision # 195764. Claimant also testified that soon after he received the decision, he called the Department, talked to a Department representative named "Josh," and requested a hearing, although he could not remember the date on which he made this telephone call. Audio recording at 14:56. Claimant asserted that when he heard nothing from the Department about his hearing request, he then followed up on his request "a few months later." Audio recording at 15:12. The Department representative who testified at the hearing contended that the Department had no record of any telephone call in which claimant requested a hearing on decision # 195764 during the appeal period. Audio recording at 24:42. At best, the evidence on whether claimant requested a hearing on decision # 195764 within 20 days of the date on which the decision was mailed was equally balanced. Claimant therefore failed to meet his burden to demonstrate by a preponderance of evidence that he timely filed a hearing request.

The record therefore fails to show claimant filed his request for hearing before December 30, 2016, making it late. ORS 657.875 allows that deadline for filing a hearing request to be extended "a reasonable time," and if the party also shows "good cause" to extend the deadline. OAR 471-040-0010(3) (February 10, 2012) defines "a reasonable time" as seven days after the circumstances that prevented a timely filing ceased to exist. However, because claimant contended that his hearing request was timely filed, he did not provide an explanation for his late filing. To the extent that claimant's December 30, 2015 hearing request may have resulted from his realization, based on the November billing statement he had received, that he was liable to repay unemployment benefits, his failure to fully understand the decision did not constitute good cause for his untimely hearing request. OAR 471-040-0010(1)(b)(A) provides that "[n]ot understanding the implications of a decision or notice when it is received" does not constitute good cause for extending the period for filing a hearing request.¹

Claimant did not timely file his request for hearing on decision # 195764, and did not demonstrate good cause for his failure to do so.

DECISION: Hearing Decision 16-UI-62448 is affirmed.

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

DATE of Service: July 15, 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.

¹ We note that the first page of decision # 195764 stated: "If you do not understand this decision, contact the Investigations Unit immediately at 503-047-1995."

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