

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0834

Reversed
Late Requests for Hearing Allowed

PROCEDURAL HISTORY: Effective December 28, 2014, claimant filed an initial claim for unemployment insurance benefits. On January 13, 2015, the Oregon Employment Department (the Department) served notice of a claim determination concluding that claimant had a valid claim for unemployment insurance benefits with a weekly benefit amount of \$549, and a maximum benefit amount of \$14,272. On January 23, 2015, the claim determination became final. Between December 2014 and April 27, 2015, claimant received \$7,686 in unemployment insurance benefits.

On November 16, 2015, the Department issued notice of an amended claim determination concluding that claimant did not have any subject wages in his base year, and, consequently, did not have a valid claim for unemployment insurance benefits. On November 26, 2015, the amended claim determination became final without claimant having filed a timely request for hearing. On December 10, 2015, the Department issued notice of an administrative decision, based on the amended claim determination, assessing a \$7,686 overpayment (decision # 92956). On December 30, 2015, decision # 92956 became final without claimant having filed a timely request for hearing.

On June 7, 2016, claimant filed late requests for hearing on the amended claim determination and decision # 92956. On June 16, 2016, the Office of Administrative Hearings (OAH) mailed notice of two hearings scheduled for June 30, 2016. On June 30, 2016, ALJ Holmes-Swanson conducted two hearings, and on July 6, 2016 issued Hearing Decision 16-UI-63137, dismissing claimant's late request for hearing on the amended claim determination, and Hearing Decision 16-UI-63141, dismissing claimant's late request for hearing on decision # 92956. On July 11, 2016, claimant filed timely applications for review of both 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-63137 and 16-UI-63141. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0834 and 2016-EAB-0835).

FINDINGS OF FACT: (1) Claimant's address of record while claiming benefits was 958 NW Summit Drive in Bend, Oregon. In March 2015, claimant moved from Bend, Oregon to Portland, Oregon, but

continued receiving mail at the Bend, Oregon address. In April 2015, claimant changed his address from Bend, Oregon with the U.S. Postal Service, but did not change his address with the Department. Effective April 27, 2015, claimant stopped claiming benefits.

(2) Seven months after claimant had stopped claiming benefits and moved from the Bend, Oregon address, the Department mailed notice of the November 2015 amended claim determination to claimant's Bend, Oregon address. Claimant did not receive the notice, and it was not returned to the Department by the U.S. Postal Service as undeliverable. The following month, the Department mailed notice of decision # 92956 to claimant's Bend, Oregon address. Claimant did not receive the notice, and it was returned to the Department as undeliverable.

(3) In approximately May 2016, claimant filed a new initial claim for unemployment insurance benefits. The Department did not immediately pay claimant benefits, and informed him that there was a dispute or investigation regarding his claim. On approximately June 1, 2016, claimant communicated with the Department and the Department began "letting me know what my challenges are" with respect to his benefits.¹ On June 6, 2016, claimant had a phone conversation with a Department employee who informed claimant about the amended claim determination decision.² Claimant filed requests for hearing on the amended claim determination decision and decision # 92956 the following day.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant showed good cause for filing late requests for hearing in these matters, and filed his late requests for hearing within a reasonable time. Claimant's requests for hearing on the amended claim determination and decision # 92956 should, therefore, be allowed.

Under ORS 657.266(5), claimant had 10 days to request a hearing on an amended claim determination. Under ORS 657.269(2), claimant had 20 days to request a hearing on decision # 92956. Under ORS 657.875, the deadline for requesting hearings may be extended a reasonable time upon a showing of good cause. OAR 471-040-0010(1) states that "'good cause' exists when an action, delay or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control." OAR 471-040-0010(3) defines "[a] reasonable time" as "seven days after the circumstances that prevented a timely filing ceased to exist."

In Hearing Decisions 16-UI-63137 and 16-UI-63141, the ALJ concluded that claimant did not show "good cause" to extend the deadline for requesting a hearing in these cases. The ALJ found as fact that claimant moved in mid-March 2015 and claimed benefits until he started work in April 2015 without updating his address with the Department during that time.³ The ALJ reasoned that "claimant did not file within the 10 day time limit because he did not update his mailing address with the Employment

¹ Audio recording, 10:45 a.m. hearing, ~23:15.

² Audio recording, 9:30 a.m. hearing, ~15:45.

³ See Hearing Decision 16-UI-63137 at 1; Hearing Decision 16-UI-63141 at 1.

Department at a time when he was claiming benefits," which is "explicitly excluded from the definition of good cause by OAR 471-040-0010(1)(b)(A)."⁴

We agree with the ALJ that OAR 471-040-0010(1)(b)(A) explicitly excludes from the definition of good cause circumstances in which "[f]ailure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal." However, we disagree with the ALJ that the cause of claimant's failure to file timely requests for hearing in these matters was his failure to notify the Department in April 2015 that he had changed addresses. On this record, during the entirety of the period claimant was claiming benefits, he was either residing at or receiving mail at his address of record in Bend, Oregon. His address of record did not change until around the time he stopped claiming benefits, and the Department did not mail the notices of the amended claim determination or decision # 92956 until November and December 2015, seven and eight months after he stopped claiming benefits. Claimant was under no obligation to keep the Department informed of his address of record during a period in which he was not claiming benefits and did not know or have reason to know that an appeal or other business with the Department was pending. We therefore conclude that claimant's failure to file timely requests for hearing on the amended claim determination and decision # 92956 was caused by his failure to receive documents the Department mailed to him at his former, invalid address, and we conclude that was a factor or circumstance beyond his reasonable control.

The record is unclear as to the specific dates the circumstances that prevented a timely filing ceased to exist in these matters. Claimant testified, variously, that he learned that there were issues preventing him from receiving benefits based on his 2016 initial claim for benefits around the "tail end of May," "around June 1st," on May 27th, and sometime before June 6th.⁵ The most specific testimony he offered as to when he learned of the decisions at issue was that he started hearing from the Department about "what my challenges are" around June 1st, and that he was specifically informed of the decisions during a conversation with an employee called "Vicky."⁶ The Department's witness testified that the first record the Department had of any communication with claimant about the decisions at issue in this matter occurred on June 6th.⁷ A review of Department records shows that claimant had a conversation with an employee called Vicky on June 6, 2016.⁸ Based on the best evidence available in this record

⁴ See Hearing Decision 16-UI-63137 at 3; Hearing Decision 16-UI-63141 at 3. We note that the 10-day time limit the ALJ referenced applied only to the amended claim determination at issue in 16-UI-63137; a 20-day time limit applied in Hearing Decision 16-UI-63141.

⁵ Audio recording, 9:30 hearing, ~15:45; Audio recording, 10:45 hearing, ~23:20; Audio recording, 10:45 hearing, ~24:44; Audio recording, 10:45 hearing, ~25:53.

⁶ Audio recording, 10:45 hearing, ~23:20; Audio recording, 9:30 hearing, ~15:45.

⁷ Audio recording, 10:45 hearing, ~16:00-17:00.

⁸ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

and Department records, it appears that claimant had conversations with the Department or otherwise learned of the amended claim determination and decision # 92956 when he spoke with "Vicky" on June 6, 2016, making that the date the circumstances that prevented a timely filing ceased to exist.⁹ Because June 6th was within 7 days of the date he filed his late requests for hearing in both matters, we conclude that he filed his late requests for hearing within the 7-day "reasonable time" period.¹⁰

Claimant had good cause to extend the filing dates in these matters, and filed his late requests for hearing within a reasonable time. We therefore conclude that he is entitled to hearings on the merits of the amended claim determination and decision # 92956.

DECISION: Hearing Decisions 16-UI-63137 and 16-UI-63141 are set aside, as outlined above.

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

DATE of Service: July 19, 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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⁹ Even if we had concluded the circumstances that prevented a timely filing ceased to exist based on claimant's testimony that he learned of the decisions "around June 1st" the outcome of this decision would remain the same, because June 1st is within 7 days of June 7th.

¹⁰ We note that although the record shows that claimant received letters from the Department concerning its non-payment of benefits based on his May 2016 initial claim beginning in mid-May 2016, the record does not show that those letters informed claimant that the Department had amended its 2015 claim determination or that he had been overpaid benefits in a specific amount based on that amended claim determination, or informed him that the Department had issued decisions to that effect. While the letters appear to have prompted claimant to contact the Department about his May 2016 initial claim and benefits he claimed under that claim, on this record, the letters did not adequately inform him of the Department's decisions concerning his December 2014 claim. For those reasons, we conclude that the circumstances that prevented claimant from filing his late requests for hearing within a reasonable time did not cease based on claimant's receipt of those letters in May 2016.