

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1036

Hearing Decision 16-UI-66452 Affirmed
Hearing Decision 16-UI-63491 Reversed

PROCEDURAL HISTORY: On February 5, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 142310). On February 25, 2016, decision # 142310 became final without a request for hearing having been filed. On April 12, 2016, the Department issued a decision (decision # 202332) assessing an \$821 overpayment, 10 penalty weeks, and a \$123.15 monetary penalty based on decision # 142310. On May 2, 2016, decision # 202332 became final without a request for hearing having been filed. On July 5, 2016, claimant filed untimely hearing requests on decisions # 142310 and # 202332. On July 11, 2016, ALJ Kangas issued Hearing Decision 16-UI- 63489, which dismissed claimant's hearing request on decision # 142310 as untimely, and Hearing Decision 16-UI-63491, which dismissed claimant's request on decision # 202332 as untimely. Both decisions were subject to claimant's right to renew his hearing requests by responding to appellant questionnaires within 14 days. Claimant timely responded to the appellant questionnaires. By letter dated July 26, 2016, the Office of Administrative Hearing cancelled Hearing Decisions 16-UI-63489 and 16-UI-63491. On August 24, 2016, ALJ Frank conducted hearings, and on August 26, 2016, issued Hearing Decision 16-UI-66452, which re-dismissed claimant's request for hearing on decision # 142310 as untimely, and Hearing Decision 16-UI-66457, which re-dismissed claimant's request for hearing on decision # 202332 as untimely. On September 2, 2016, claimant filed applications for review of Hearing Decisions 16-UI-66452 and 16-UI-66457 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-66452 and 16-UI-66457. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-1035 and 2016-EAB-1036).

FINDINGS OF FACT: (1) On February 2, 2016, claimant spoke with a Department investigator about his work separation from Mt. Hood Ski Bowl. The investigator told claimant that he would be issuing a decision concerning the work separation. Hearing in Case No. 2016-UI-52081, audio recording at 22:49.

(2) On February 3, 2016, claimant spoke with a Department representative and re-started a claim for unemployment benefits. He told the representative that he would not claim benefits for the week of January 24 through 30, 2016 (week 4-16) because he had been incarcerated during that week. Hearing in Case No. 2016-UI-52081, audio recording at 24:09.

(3) On February 5, 2016, the Department mailed decision # 142310 (the voluntary quit decision) to claimant at the following address: 20275 E. Ambrose St., PO Box 72, Brightwood OR 97100-0072. Claimant did not receive this decision because he had moved from this address and did not notify the Department of his change of address. Hearing in Case No. 2016-UI-52081, audio recording at 17:15.

(4) On or after February 7, 2016, claimant claimed benefits for the week of January 31 through February 6, 2016 (week 5-16). After he filed his claim for benefits for week 5-16, claimant stopped claiming unemployment benefits.

(5) On April 12, 2016, the Department mailed decision # 202332 (the overpayment decision) to claimant at the 20275 E. Ambrose St. address. The decision was returned to the Department as undeliverable.

(6) On July 4, 2016, claimant found out about decisions # 142310 and # 202332. On July 5, 2016, he contacted the Department and requested hearings on both decisions. Case No. 2016-UI-52081, audio recording at 19:49.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant failed to demonstrate good cause for failing to file a timely file a request for hearing on decision # 142310 (the voluntary quit decision). We disagree with the ALJ and conclude that claimant demonstrated good cause for filing a late request for hearing on decision #202332 (the overpayment decision), and filed his hearing request within a reasonable time. Claimant's request for hearing on decision # 202332 should therefore be allowed.

Request for Hearing on Decision # 142310: ORS 657.269 provides that an individual has 20 days after the date an administrative decision is mailed to request a hearing. ORS 657.875 provides that deadline may be extended a reasonable time upon a showing of good cause. "Good cause" is defined as an excusable mistake or factors beyond an applicant's reasonable control. OAR 471-040-0010(1) (February 10, 2012). "Good cause" does not include an individual's failure to receive a document because an individual did not notify the Department of a changed address while the individual is claiming benefits. OAR 471-040-0010 (1)(b)(A). The Department mailed decision # 142310 to claimant on February 5, 2016, a date on which claimant was claiming unemployment benefits. He did not receive the decision because he had not informed the Department of a change in his address, and only filed his untimely hearing request on July 5, 2016, after he found out about the decision. Claimant's failure to timely file a hearing request on decision # 142310 occurred because he did not receive the decision due to his failure to notify the Department of his address change while he was claiming benefits. He therefore did not demonstrate good cause for his late filing.

Request for Hearing on Decision # 202332: When the Department mailed decision # 202332 to claimant on April 12, 2016, he was no longer claiming unemployment benefits. Claimant's failure to receive the decision resulted from a mistake that can be excused: because he reasonably did not

anticipate receiving any communication from the Department four months after he stopped claiming unemployment benefits in February 2016, he did not keep the Department informed of his current address in April 2016. Claimant therefore demonstrated good cause for extending the deadline for filing his request for hearing on decision # 202332. The record shows that claimant filed his hearing request within seven days of the date on which the circumstances that prevented his timely filing ceased to exist. He found out about decision # 202332 on July 4, 2016 and filed his hearing request on July 5, 2016.

Claimant had good cause to extend the date for timely filing a hearing request on decision # 202332, and filed his late request for a hearing on this decision within a reasonable time. He is therefore entitled to a hearing on the merits of decision # 202332.

DECISION: Hearing Decision 16-UI-66452 is affirmed. Hearing Decision 16-UI-66457 is set aside, as outlined above.

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

DATE of Service: September 13, 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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