

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1072**

*Reversed*  
*Late Request for Hearing Allowed*

**PROCEDURAL HISTORY:** On March 29, 2016, the Department served notice of an administrative decision (overpayment decision) concluding that claimant willfully underreported earnings to obtain benefits and therefore was overpaid \$21,044 in benefits that he must repay, is disqualified for 52 weeks of future benefits, and assessed a \$6,313.20 monetary penalty. On April 18, 2016, the overpayment decision became final without claimant having filed a request for hearing. On August 18, 2016, claimant filed a late request for hearing. On August 23, 2016, ALJ Kangas issued Hearing Decision 16-UI-66116, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by September 6, 2016. On September 7, 2016, claimant filed a response to the questionnaire and a timely application for review of Hearing Decision 16-UI-66116 with EAB by mail. On September 12, 2016, EAB received the application for review and response to the questionnaire, and forwarded the response to the Office of Administrative Hearings (OAH). On September 15, 2016, ALJ Kangas issued a letter notifying claimant that, because response to the appellant questionnaire was late, OAH would not review its contents.

Claimant's appellant questionnaire response is construed as a written argument for purposes of EAB's review of this matter. We construe claimant's submission of the information as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. OAH declined to consider the information claimant presented, suggesting that presenting the information was beyond his control. We therefore admitted claimant's response into evidence as EAB Exhibit 1, and reviewed and considered it when reaching this decision.<sup>1</sup>

<sup>1</sup> 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 at EAB Exhibit 1.

**FINDINGS OF FACT:** (1) Claimant last claimed benefits on November 10, 2014 while living in Riverbank, California.<sup>2</sup> In February 2016, he moved to Modesto, California and did not notify the Department of his updated address. On March 29, 2016, the Department mailed notice of the overpayment decision to claimant's former address in Riverbank. Claimant therefore did not receive notice of the decision.

(2) On August 9, 2016, claimant telephoned the Department, requested a copy of his unemployment insurance records, and provided his updated address in Modesto.<sup>3</sup> On or after August 11, 2016, claimant received a document from the Department showing the amount of the overpayment assessed in the overpayment decision. On August 18, 2016, claimant filed a request for hearing on the overpayment decision.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing is allowed.

ORS 657.269 requires that parties file requests for hearing within 20 days after the date the decisions were mailed. In order to be timely, claimant's request for hearing in this matter had to be filed no later than April 18, 2016. Claimant filed it on August 18, 2016, making it four months late. ORS 657.875 allows the filing deadline to be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010(1) (February 10, 2012) defines "good cause" as factors or circumstances beyond an individual's reasonable control or an excusable mistake. Good cause does not include the failure to receive a document due to not notifying the Department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal. OAR 471-040-0010(1)(b)(A). OAR 471-040-0010(3) defines "a reasonable time" as seven days after the circumstances that prevented a timely filing ceased to exist.

The first issue is whether claimant established good cause for filing a late request for hearing on the overpayment decision. Claimant failed to file a timely request for hearing on the overpayment decision because he did not receive notice of the decision in the mail. He did not receive notice of the decision in the mail because he did not notify the Department of his updated address in Modesto, California. However, claimant stopped claiming benefits after November 10, 2014, over 16 months before the Department mailed notice of the overpayment decision on March 18, 2016, and there was no pending appeal during that 16 month period. OAR 471-040-0010(1)(b)(A) therefore does not apply, and claimant's failure to notify the Department of a change of address approximately 15 months after he stopped claiming benefits was, at worst, an excusable mistake. Claimant therefore established good cause for filing a late request for hearing on the overpayment decision.

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<sup>2</sup> 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.

<sup>3</sup> 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.

The next issue is whether claimant filed his request for hearing on the overpayment decision within a reasonable time, 7 days, after the circumstances that prevented a timely filing ceased to exist. Claimant filed his request for hearing on the overpayment decision on August 18, 2016, 9 days after he telephoned the Department on August 9, 2016, requested a copy of his unemployment insurance records, and provided his updated address in Modesto. However, we find it unlikely that claimant received his unemployment insurance records from the Department before August 11, 2016. Even if we assume the Department mailed those records to claimant on August 9, 2016, EAB received claimant's application for review five days after claimant mailed it from Modesto, and we therefore infer it took at least two days before claimant received the document showing the amount of the overpayment assessed in the overpayment decision and likely longer. We therefore find that claimant likely filed his request for hearing within seven days of becoming aware of the overpayment decision. Claimant therefore filed his request for hearing on the overpayment decision within a reasonable time.

In sum, claimant established good cause for filing a late request for hearing on the overpayment decision on August 18, 2016. Claimant's request for hearing on the overpayment decision therefore is allowed. Claimant is entitled to a hearing on the merits of the overpayment decision.

**DECISION:** Hearing Decision 16-UI-66116 is set aside, as outlined above.

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

**DATE of Service:** September 20, 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](http://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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