

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1325

Affirmed
Late Request for Hearing on Decisions # 80648 & # 83034 Denied
Overpayment Assessed

PROCEDURAL HISTORY: On May 20, 2016, the Oregon Employment Department (the Department) served notice of two administrative decisions: decision # 80648 concluded that claimant did not actively seek work from March 13 through April 9, 2016 (weeks 11-16 through 15-16), and decision # 83034 concluded that claimant did not actively seek work from May 1 through May 14, 2016 (weeks 18-16 and 19-16). On June 9, 2016, these administrative decisions became final without claimant having filed a request for hearing. On June 21, 2016 the Department served notice of a decision, based on decision # 80648, concluding that claimant was overpaid \$1,937 in unemployment benefits for weeks 11-16 through 14-16 (decision # 131618). On July 11, 2016, decision # 131618 became final without a request for hearing having been filed. On July 27, 2016, claimant filed a late request for hearing on decisions # 80648, # 83034 and # 131618.

On August 2, 2016, ALJ Kangas issued Hearing Decision 16-UI-74882, dismissing claimant's request for hearing on decision # 131618 as untimely without good cause. On August 11, 2016, claimant filed an application for review of Hearing Decision 16-UI-74882 with the Employment Appeals Board (EAB). On September 26, 2016, EAB issued Appeals Board Decision 2016-EAB-0941, reversing and remanding Hearing Decision 16-UI-74882 for further development of the record on claimant's late request for hearing on decisions # 80648, # 83034 and # 131618.

On October 27, 2016, ALJ Shoemake conducted a consolidated hearing, and on November 4, 2016, issued the following decisions: Hearing Decision 16-UI-70589 concluded that claimant failed to show good cause for filing a late hearing request on decision # 80648; Hearing Decision 16-UI-70590 concluded that claimant failed to show good cause for filing a late hearing request on decision # 83034; and Hearing Decision 16-UI-74882 allowed claimant's late request for hearing on decision # 131618 and affirmed that decision. On November 28, 2016, claimant filed applications for review of all three hearing 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-70589, 16-UI-70590 and 16-UI-64822. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2016-EAB-1325, 2016-EAB-1326, and 2016-EAB-1327). No party applied for review of that portion of Hearing Decision 16-UI-74882 allowing claimant's late request for hearing on decision # 131618. EAB therefore limited its review of Hearing Decision 16-UI-74882 to whether claimant was overpaid \$1,937 in unemployment benefits for weeks 11-16 through 14-16.

FINDINGS OF FACT: (1) On December 18, 2015, claimant filed an initial claim for unemployment benefits. A weekly benefit amount of \$567 was established.

(2) Claimant claimed benefits for weeks 11-16 through 14-16, and reported that he was actively seeking work during those weeks. For weeks 11-16 through 13-16 (March 13 through April 2, 2016), claimant received \$567 per week in unemployment benefits. For week 14-16 (April 3 through 9, 2016), claimant received \$236 in benefits.

(3) Claimant claimed benefits for week 15-16 (April 10 through 16, 2016) but was not paid benefits for that week.

(4) Claimant did not claim benefits for the weeks from April 17 through 30, 2016 (weeks 16-16 and 17-16). Claimant claimed benefits for weeks 18-16 and 19-16, but was not paid benefits for those weeks.¹

(5) Claimant lives in Welches, Oregon, an area in which mail is not delivered to individual homes. Claimant picks up his mail from a post office box, which he typically checks every two to three weeks.

(6) Sometime in May 2016, claimant received administrative decisions # 83034 and # 80648. Although claimant read the decisions, he did not think he needed to respond to them because the decisions denied him benefits, but did not assess an overpayment. Claimant therefore did not request a hearing on decisions # 83034 and # 80648 until July 27, 2016, shortly after he became aware of decision # 131618, which assessed the overpayment based on decision # 80648.

CONCLUSION AND REASONS: We agree with the ALJ that claimant failed to demonstrate good cause for filing untimely hearing requests on decisions # 83034 and # 80648. We also agree with the ALJ that claimant was overpaid \$1, 927 in benefits for weeks 11-16 through 14-16 that he is liable to repay to the Department.

Late Requests for Hearing: ORS 657.269 requires that parties file a request for hearing no later than 20 days after the date the decision was mailed. In order to be timely, claimant's requests for hearing on decisions # 83034 and # 80648 had to be filed by June 9, 2016. Claimant's requests for hearings on these decisions were untimely because they were filed on July 27, 2016. ORS 657.875 allows the deadline for filing a hearing request to be extended "a reasonable time" if the party shows "good cause" for extending the deadline. A "reasonable time" means seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0010(3) (February 10, 2012). "Good cause" is

¹ We take official notice of this fact which is contained in Department records. OAR 471-0041-0090(3) (October 29, 2006). Any party that objects to our taking notice of this fact must submit its objections to this office in writing, setting forth the basis of the objection, within 10 days of the date on which this decision is mailed. Unless such an objection is received, the noticed fact will remain part of the record.

defined as "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(1).

In regard to decisions # 83034 and # 80648, claimant received them in May 2016 but did not file hearing requests at that time. Claimant did not think that he needed to take any action because the decisions denied him benefits, but did not assess an overpayment. We note, however, that decision# 80648 states that "[t]his decision resulted from information obtained after the original decision to pay benefits, and may create an overpayment if you were previously allowed benefits." Claimant's failure to understand the meaning of this statement -- that a decision finding him ineligible for benefits he had previously received could make him liable to repay these benefits to the Department—was not good cause for his untimely hearing request. *See* OAR 471-030-0010(1)(b)(B) ("good cause" does not include "[n]ot understanding the implications of a decision or notice when it is received."). Claimant's hearing requests on decisions # 80648 and # 83034 are therefore dismissed as untimely without good cause.

Overpayment: ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.* As a matter of law, claimant did not actively seek work during weeks 11-16 through 14-16 – the Department determined that he did not in decision # 80648, which became final on June 9, 2016, and claimant's late request for hearing on that decision has been dismissed at every level of administrative review. Claimant therefore received \$1,937 in unemployment insurance benefits because he erroneously reported that he actively sought work during weeks 11-16 through 14-16. Regardless of claimant's knowledge or intent, he is liable to repay the \$1,937 overpayment to the Department.

DECISION: Hearing Decisions 16-UI-70589, 16-UI-70590 and 16-UI-70622 are affirmed.

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

DATE of Service: November 30, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.