

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1354**

*Affirmed*  
*Late Request for Hearing Denied*  
*Overpayment Assessed*

**PROCEDURAL HISTORY:** On September 8, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 130059) concluding that claimant failed to actively search for work from July 31 through August 20, 2016 (weeks 31-16 through 33-16). On September 27, 2016, decision # 130059 became final without a request for hearing having been filed. On October 13, 2016, the Department served notice of an administrative decision (decision # 145238) assessing an overpayment of \$1,180 based on decision # 130059. On October 18, 2016, claimant filed an untimely hearing request on decision # 130059 and a timely hearing request on decision # 145238. On November 10, 2016, ALJ Lee conducted hearings, and on November 17, 2016, issued Hearing Decision 16-UI-71306, dismissing claimant's late request for hearing on decision # 130059, and Hearing Decision 16-UI- 71307, affirming decision # 145238. On December 2, 2016, claimant filed applications for review with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-71306 and 16-UI-71307. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-1353 and 2016-EAB-1354).

**FINDINGS OF FACT:** (1) On August 5, 2016, claimant filed an initially claim for benefits. A weekly benefit of \$590 was established.

(2) Claimant claimed benefits for weeks 32-16 and 33-16 (August 7 through August 20, 2016), and was paid \$590 in benefits for each of these weeks.

(3) On August 22, 2016, claimant resumed working as a long haul truck driver for his regular employer. Claimant was away from home from the end of August through the last week of September 2016. Because he had returned to work and stopped claiming benefits, claimant did not expect to receive any

mail from the Department while he was gone, and did not ask that his wife check his mail for correspondence from the Department.

(4) On August 23, 2016, the Department sent claimant a letter asking for information about claimant's work search activities during weeks 32-16 and 33-16, and his status as a temporarily laid off worker. Claimant responded to this letter, and the Department received his response on September 8, 2016.

(5) When claimant returned home during the last week of September 2016, he found decisions # 130059 and # 145238 in the mail that had accumulated during his absence. On October 18, 2016, claimant called the Department and requested hearings on both decisions.

**CONCLUSIONS AND REASONS:** Hearing Decision 16-UI-71306 is **affirmed**. Hearing Decision 16-UI-71307 is **adopted**.

Hearing Decision 16-UI-71306: Under ORS 657.269, claimant had 20 days after decision # 130059 was issued to request a hearing. ORS 657.875 provides, however, that the time period for requesting a hearing may be extended "a reasonable time" upon a showing of "good cause." "Good cause" is "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). A "reasonable time" is "seven days after the circumstances that prevented a timely filing ceased to exist." OAR 471-040-0010(3) (February 10, 2012).

At the time claimant received decision #130059, he had returned to work as a long haul truck driver and was no longer claiming unemployment benefits. Claimant did not expect to receive any more correspondence from the Department about his benefits, and had no reason to ask that his wife check his mail for letters from the Department while he was away from home, from late August through late September 2016. Claimant's mistaken belief that he would receive no more letters from the Department was excusable, and provided good cause for extending the deadline by which he was required to request a hearing on decision # 130059.

Claimant did not, however, file his hearing request within a reasonable time after the circumstances that prevented his timely filing ceased to exist. Although claimant was unsure of the exact date on which he learned about the decision, he testified that he found out about the decision sometime in late September 2016. Assuming that claimant learned about the decision on September 30, at the latest, his October 18 hearing request was filed more than seven days from the date on which he discovered the decision. Claimant's untimely hearing request is therefore denied because he failed to file it within a reasonable time.

Hearing Decision 16-UI-71307: EAB reviewed the entire record in this case. On *de novo* review and pursuant to ORS 657.275(2), this hearing decision is **adopted**.

**DECISION:** Hearing Decisions 16-UI-71306 and 16-UI-71307 are affirmed.

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

**DATE of Service: December 7, 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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