

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1414**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On April 12, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding did not actively seek work from January 24, 2016 to February 27, 2016 (decision # 85906). On May 2, 2016, decision # 85906 became final without claimant having filed a timely request for hearing. On May 13, 2016, the Department served notice of an administrative decision, based on decision # 85906, assessing a \$2,299 overpayment that claimant was liable to repay (decision # 150355). On June 2, 2016, decision # 150355 became final without claimant having filed a timely request for hearing. On July 27, 2016, claimant filed a late request for hearing that was construed as applying only to decision # 150355.<sup>1</sup> On September 1, 2016, ALJ Wyatt conducted a hearing, and on September 9, 2016 issued Hearing Decision 16-UI-67237, allowing claimant's late request for hearing on decision # 150355 and concluding that claimant was overpaid \$2,299 in benefits that he was liable to repay. On September 29, 2016, Hearing Decision 16-UI-67237 became final without claimant having filed a timely application for review of that matter with the Employment Appeals Board (EAB). On November 3, 2016, claimant re-filed a second late request for hearing on decision # 85906. On November 7, 2016, ALJ Kangas issued Hearing Decision 16-UI-70683, dismissing claimant's late request for hearing on decision # 85906 subject to claimant's right to renew the request by responding to an appellant questionnaire by November 21, 2016. On November 15, 2016, claimant responded to the questionnaire. On November 23, 2016, the Office of Administrative Hearings (OAH) mailed a letter canceling Hearing Decision 16-UI-70683. On December 13, 2016, ALJ Wyatt conducted a hearing, and on December 15, 2016 issued Hearing Decision 16-UI-72985, re-dismissing claimant's late request for hearing on decision # 85906. On December 20, 2016, claimant filed an application for review of Hearing Decision 16-UI-72985 with EAB. This matter is before EAB only on claimant's application for review of Hearing Decision 16-UI-72985, which dismissed his late request for hearing on decision # 85906.

<sup>1</sup> Claimant's July 27, 2016 letter stated it was "regarding overpayment of benefits [*sic*]" at issue in decision # 150355, but also addressed the layoff period at issue in decision # 85906. The letter was erroneously construed only as a late request for hearing on decision # 150355, and not as a request for hearing on decision # 85906. The error does not affect the outcome of this matter, however, as we have found that the filing date of claimant's late request for hearing on decision # 85906 occurred on July 27, 2016 and, in the end, claimant has had a hearing on his late request for hearing in this matter.

**EVIDENTIARY MATTER:** In Hearing Decision 16-UI-72985, the ALJ stated that Exhibit 1 was admitted into evidence without objection. The record shows, however, that while the ALJ described several documents as being part of Exhibit 1, he did not ask the parties whether they objected to the admission of the exhibit into evidence and did not actually admit the documents into evidence. We have, therefore, admitted the following documents, described by the ALJ as Exhibit 1, into evidence to complete the record: administrative decision # 85906, dated April 12, 2016; Hearing Decision 16-UI-70683, the "dismissal with right to renew appeal"; claimant's 2-page response to the appellant questionnaire; and a document claimant submitted entitled "2nd attempt" dated July 27, 2016 and received by the Office of Administrative Hearings on November 15, 2016. Audio recording at ~ 8:00-12:25. 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 evidence will remain in the record as Exhibit 1.

**FINDINGS OF FACT:** (1) The Department mailed notice of decision # 85906 to claimant at his address of record.

(2) Between April 12, 2016, the date the Department mailed decision # 85906, and May 2, 2016, the deadline for filing a timely request for hearing on that decision, claimant frequently traveled between his residence in Roseburg and Portland, Oregon because of his child's need for brain surgery. He traveled between Roseburg and Portland on the weekends and his days ran together; however he received the decision shortly after it was mailed.

(3) The decision stated across the top of the first page that benefits were denied and that the decision canceled a prior payment determination. The decision stated on page two that benefits were denied for the period claimed, which was identified on page one as January 24, 2016 through February 27, 2016. On page two, the decision also stated that the decision "may create an overpayment if you were previously allowed benefits." The Department included with the decision an explanation of his appeal rights, a request for hearing form for claimant's use, and instructions about how to request a hearing.

(4) Claimant disagreed with the Department's decision to deny benefits but was preoccupied with his son's health. Although he was not prevented from doing so by any factor or circumstance, he did not read the appeal deadline, and did not file a request for hearing within the time allowed.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant's late request for hearing should be dismissed.

ORS 657.269 provides that parties have 20 days to request a hearing after the Department issues an administrative decision. ORS 675.875 allows the 20-day deadline to be extended "a reasonable time" upon a showing of "good cause." OAR 471-040-0010 (February 10, 2012) defines "good cause" as factors beyond the party's reasonable control or an "excusable mistake."

Claimant did not file a timely request for hearing in this matter because although he received decision # 85906 and disagreed with it, he was, understandably, preoccupied with personal matters. Claimant did not establish that he was prevented from filing a timely request for hearing by factors beyond his reasonable control, however, because he was receiving mail during the relevant time period, received the

decision, and it appears he was or should have been capable of reading the decision and appeal information and requesting a hearing had he chosen to do so. Claimant's failure to read the decision and request a hearing within 20 days of the date the decision was mailed appears to have been a mistake, but it was not an "excusable mistake" within the meaning of the administrative rule because the mistake did not raise due process issues and was not the result of inadequate notice, reasonable reliance on another person, or the inability to follow directions despite substantial efforts to comply. Claimant did not show good cause to extend the filing deadline in this case, and his request for hearing therefore is dismissed.

**DECISION:** Hearing Decision 16-UI-72985 is affirmed.

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

**DATE of Service:** January 6, 2017

**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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