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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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AAA 005.00
MC 010.05

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0076

Affirmed
Requests to Reopen Denied
Ineligible ~ Overpaid

PROCEDURAL HISTORY: On October 13, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from August 28 to September 17 and October 2 to October 8, 2016 (decision # 120145). On October 25, 2016, claimant filed a timely request for hearing on decision # 120145. On November 7, 2016, the Department served notice of an administrative decision concluding that claimant did not actively seek work from October 9 to October 15, 2016 (decision # 84027). On November 16, 2016, the Department served notice of an administrative decision assessing a \$409 overpayment (decision # 81506). On November 22, 2016, claimant filed timely requests for hearing on decisions # 81506 and 84027. On December 6, 2016, the Office of Administrative Hearings (OAH) mailed notice of two hearings scheduled for December 19, 2016 at 2:30 p.m. and 3:30 p.m., at both of which claimant failed to appear. On December 20, 2016, ALJ Murdock issued three hearing decisions dismissing claimant's requests for hearing for failure to appear: Hearing Decision 16-UI-73279 dismissed claimant's request for hearing on decision # 120145; Hearing Decision 16-UI-73281 dismissed claimant's request for hearing on decision # 84027; and Hearing Decision 16-UI-73282 dismissed claimant's request for hearing on decision # 82506. On December 29, 2016, claimant filed requests to reopen both hearings. On January 11, 2017, ALJ Kangas reviewed claimant's requests and issued Hearing Decision 17-UI-74520, dismissing claimant's request to reopen the hearing on decision # 120145, Hearing Decision 17-UI-74523, dismissing claimant's request to reopen the hearing on decision # 84027, and Hearing Decision 17-UI-74525, dismissing claimant's request to reopen the hearing on decision # 81506. On January 19, 2017, claimant filed timely applications for review of Hearing Decisions 17-UI-74520, 17-UI-74523 and 17-UI-74525 with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-74520, 17-UI-74523 and 17-UI-74525. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2017-EAB-0074, 2017-EAB-0075 and 2017-EAB-0076).

With claimant's applications for review, he submitted a written argument in which he argued that he had good cause for missing the December 19, 2016 hearings in this matter because he "was called in early

[to work] for training that day.” As noted in the ALJ’s decisions, however, claimant received notice of the hearings prior to December 19th, and it was within his reasonable control to either attend the hearing as scheduled or contact OAH at the phone numbers provided on the notices of hearing he received if he was unable to do so. He was also advised on the notices of hearing that if he requested the hearings and did not call at the time set for his hearings that his hearings would be dismissed. Given those factors, claimant has not proven that the circumstances that caused him to miss the December 19th hearings were beyond his reasonable control or the result of an excusable mistake, and, therefore, has not established good cause to reopen the hearings. We therefore agree with the ALJ that claimant’s requests to reopen must be denied.

Claimant also argued in his written argument that he was eligible for benefits during the weeks at issue in decisions # 81506, 84027 and 120145, and was improperly denied benefits for those weeks. Unfortunately, because claimant failed to appear at the hearings he requested to dispute the denial of benefits in those decisions, and did not establish good cause to reopen the hearings, neither EAB nor OAH have jurisdiction to review the Department’s denial of benefits and assessment of an overpayment.

Finally, with respect to claimant’s submission of new information, specifically, paystubs from the weeks at issue, EAB may only consider them if they are both relevant and material to EAB’s determination that factors or circumstances beyond his reasonable control prevented him from offering the information at the hearings. ORS 657.275(2) and OAR 471-041-0090(2). Because he did not establish that it was beyond his reasonable control to appear at the hearings and provide evidence, and because EAB does not have jurisdiction over claimant’s eligibility for benefits during the weeks at issue, we did not consider claimant’s new information when reaching this decision.

EAB reviewed the hearing records in these matters. On *de novo* review and pursuant to ORS 657.275(2), the hearing decisions under review are **adopted**.

DECISION: Hearing Decisions 17-UI-74520, 17-UI-74523 and 17-UI-74525 are affirmed.¹

DATE of Service: January 26, 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. 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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¹ The ALJ’s analysis referred to the events at issue as having taken place on November 16, 2016 and November 19, 2016. See Hearing Decisions 17-UI-74520, 17-UI-74523 and 17-UI-74525 at 2. Although that typographical error did not affect the substance of the ALJ’s decision, we note for the sake of accuracy that the referenced events actually took place on December 16, 2016 and December 19, 2016.