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

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<p>EMPLOYMENT APPEALS BOARD DECISION 2017-EAB-0385</p>
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*Hearing Decision 17-UI-78582 Reversed
Late Request for Hearing Allowed*

Hearing Decision 17-UI-78594 Reversed and Remanded

PROCEDURAL HISTORY: On December 20, 2016, the Oregon Employment Department (the Department) served notice of administrative decision # 71707, concluding that claimant did not actively seek work from November 13 through December 10, 2016 (weeks 46-16 through 49-16). On January 9, 2017, decision # 71707 became final without claimant having filed a request for hearing. On January 30, 2017, the Department served notice of administrative decision # 112027 concluding, based on decision # 71707, that claimant was overpaid \$1,244 in benefits for weeks 46-16 through 49-16 that he must repay. On February 7, 2017, claimant filed a late request for hearing on decision # 71707 and a timely request for hearing on decision # 112027. On March 6, 2017, ALJ Monroe conducted hearings, and on March 9, 2017 issued Hearing Decisions 17-UI-78582 and 17-UI-78594, dismissing claimant's request for hearing on decision # 71707 and affirming decision # 112027. On March 28, 2016, claimant filed timely applications for review of Hearing Decisions 17-UI-78582 and 17-UI-78594 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-78582 and 17-UI-78594. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0384 and 2017-EAB-0385).

FINDINGS OF FACT: (1) The Department mailed the December 20, 2016 notice of decision # 71707 to claimant's address of record in Westfir, Oregon, where claimant resided with his mother at her home. Claimant typically was not at home when mail was delivered, so his mother received and processed the mail, and set claimant's mail aside for him. Claimant's mother was very reliable in setting claimant's mail aside for him, and even texted him when she received important mail addressed to him.

(2) Decision # 71707 was delivered within three business days after it was mailed on December 20, 2016. Claimant was not at home when it was delivered. Claimant's mother received and processed the mail, but did not set the decision aside for him, or text him that he had received mail from the

Department. Claimant therefore did not receive the decision, and was unaware of the decision through January 2017.

(3) Claimant first became aware of decision # 71707 in early February 2017 when he received decision # 112027, which stated that claimant was ineligible to receive benefits due to an administrative decision mailed December 20, 2016, which found that claimant was not actively seeking work. Claimant filed his request for hearing on decision # 71707 within seven days of receiving decision # 112027.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant's late request for hearing on decision # 71707 should be allowed. Hearing Decision 17-UI-78582 therefore is reversed, and that matter remanded for a hearing on the merits decision # 71707. Hearing Decision 17-UI-78594, which was based entirely on decision # 71707, also is reversed and remanded pending the outcome of that hearing.

ORS 657.269 provides that the Department's decisions become final unless a party files a request for hearing within 20 days after the date it is mailed. ORS 657.875 provides that the 20-day deadline may be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010 provides that "good cause" includes circumstances beyond an applicant's reasonable control, and defines "reasonable time" as seven days after those factors ceased to exist.

In Hearing Decision 17-UI-78582, the ALJ concluded that claimant failed to establish good cause for filing a late request for hearing on decision # 71707 because he failed to show that he did not receive the December 20, 2016 notice of that decision.¹ To the extent the ALJ determined that claimant failed to show the notice was not delivered to his address of record, we agree. However, the record shows that claimant's mother likely failed to set the notice aside for claimant after it was delivered. Claimant reasonably relied on his mother to receive and process mail delivered to her home, and set his mail aside for him given that she was very reliable in doing so and even texted him when she received important mail addressed to him. Her apparent failure to set the notice of decision # 71707 aside for claimant or text him that he had received mail from the department therefore was a circumstance beyond claimant's reasonable control that prevented him filing a timely request for hearing. Claimant therefore established good cause for filing a late request for hearing.

Claimant also established that he filed his request for hearing on decision # 71707 within a "reasonable time" given that he filed within first becoming aware of the decision in early February 2017. Claimant's late request for hearing on decision # 71707 therefore should be allowed.

The ALJ's determination in Hearing Decision 17-UI-78594 that claimant was overpaid benefits for weeks 46-16 through 49-16 was based entirely on her determination in Hearing Decision 17-UI-78582 dismissing claimant's request for hearing on decision # 171707, and finding that decision final as a matter of law. Because we have concluded that claimant is entitled to a hearing about his eligibility for benefits for those weeks and, depending on the outcome of that hearing, may or may not have been overpaid, we also conclude that there is an insufficient basis upon which to conclude that claimant was overpaid benefits. Hearing Decision 17-UI-78594 therefore must be reversed and remanded pending a determination of claimant's eligibility for benefits.

¹ Hearing Decision 17-UI-78582 at 3.

We note that the failure of any party to appear at any subsequent hearings scheduled in these matters will not reinstate Hearing Decisions Hearing Decisions 17-UI-78582 or 17-UI-78594, or return these matters to EAB. Only timely applications for review of any subsequent hearing decisions will cause these matters to return to EAB.

DECISION: Hearing Decisions 17-UI-78582 and 17-UI-78594 are set aside, as outlined above, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: April 3, 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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