

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0688

Affirmed
Late Request for Hearing Dismissed
Overpayment Assessed

PROCEDURAL HISTORY: On November 29, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks including October 23 through November 19, 2016 (week 43-16 through 46-16) and was ineligible for benefits (decision # 114854). On December 19, 2016, decision # 114854 became final without claimant having filed a timely request for hearing. On February 28, 2017, the Department served notice of another administrative decision, based on the finality of decision # 114854, assessing a \$276 overpayment that claimant was required to repay (decision # 135423). On March 7, 2017, claimant filed a late request for hearing on decision # 114854 and a timely request for hearing on decision # 135423.

On March 9, 2017, ALJ Kangas issued Hearing Decision 17-UI-78555, dismissing claimant's late request for hearing on decision # 114854, subject to his right to renew the request by responding to an appellant questionnaire by March 23, 2017. On March 23, 2017, claimant responded to the appellant questionnaire. On May 5, 2017, ALJ Frank conducted two hearings, and on May 12, 2017, issued Hearing Decision 17-UI-83211, which dismissed claimant's late request for hearing, leaving decision #114854 undisturbed, and Hearing Decision 17-UI-83212, which affirmed decision # 135423. On June 1, 2017, claimant filed timely applications for review of Hearing Decisions 17-UI-83211 and 17-UI-83212 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-83211 and 17-UI-83212. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0687 and 2017-EAB-0688).

FINDINGS OF FACT: (1) On October 26, 2016, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's weekly benefit amount was \$138.

(2) During each of the weeks including November 6 through November 19, 2016 (weeks 45-16 through 46-16), claimant filed a weekly claim for benefits. When filing each of his claims, claimant believed

and certified to the Department that he had actively sought work, in accordance with the Department's requirements for an individual on a temporary layoff from his employment, by remaining in contact with his employer. However, claimant was not on temporary layoff and performed no other work search activities during weeks 45-16 and 46-16. Based on claimant's false certifications that he had actively sought work during those two weeks, the Department erroneously paid claimant a total of \$276 in regular benefits.

(3) Claimant did not check his mailbox regularly. On or about March 7, 2016, he checked his mailbox and discovered the Department's notices of decisions # 114854 and 135423 in his mail. Claimant requested hearings on both decisions that same day.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant's late request for hearing on decision # 114854 is subject to dismissal and that claimant was overpaid \$276 and is liable to repay the Department that amount under ORS 657.310.

Late Request for 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 (February 10, 2012) provides that "good cause" includes factors beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors ceased to exist.

In this case, the deadline for claimant to file a timely request for hearing on decision # 114854 expired on December 19, 2016; claimant did not file his request for hearing until more than ten weeks later, on March 7, 2017, making his request late. In his responses to the appellant questionnaire, claimant asserted that he did not receive decision # 114854 until approximately March 7, 2017, when he filed his late request for hearing. Case No. 2017-UI-62697; Exhibit 3. However, at hearing claimant explained that he "[did not] check the mailbox every day, so I guess it's my fault" that a hearing request was not filed by the December 19 deadline. Audio Record ~ 21:15 to 21:40. Accordingly, because claimant did not assert or show that his failure to regularly check his mailbox was caused by factors beyond his reasonable control, claimant did not establish good cause for his late request for hearing. For that reason, we agree with the ALJ that claimant's late request for hearing on decision # 114854 should be dismissed.

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.*

Decision # 114854, which claimant did not timely appeal and became final, and for which claimant's late request for hearing has been denied, concluded that claimant did not actively seek work during the weeks at issue, and therefore was ineligible to receive benefits for those weeks. Therefore, as a matter of law, claimant was not entitled to the \$276 in regular benefits he received for those weeks. Claimant's statements to the Department that he actively looked for work during those weeks also were false as a

matter of law, and caused him to receive the \$276 in regular benefits at issue. Regardless of claimant's knowledge or intent, he is liable under ORS 657.310(1) to either repay the \$276 in regular benefits to the Department or have that amount deducted from any future benefits otherwise payable to him under ORS Chapter 657.

DECISION: Hearing Decisions 17-UI-83211 and 17-UI-83212 are affirmed.

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

DATE of Service: June 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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