

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0740

Application for Review Dismissed

PROCEDURAL HISTORY: On April 6, 2017, the Oregon Employment Department (the Department) served four notices of four administrative decisions: # 95418 concluded claimant was not available for work from February 12, 2017 to February 18, 2017; # 100536 concluded claimant was not available for work from February 19, 2017 to February 25, 2017; # 101306 concluded claimant was not available for work from March 5, 2017 to March 11, 2017; and #110708 concluded claimant was not available for work from March 5, 2017 to April 1, 2017. Claimant filed timely requests for hearing on all four decisions. On May 9, 2017, ALJ Lohr conducted a consolidated hearing, and on May 10, 2017 issued the following hearing decisions: Hearing Decision 17-UI-82961 affirmed decision # 95418; Hearing Decision 17-UI-82944 affirmed decision # 100536; Hearing Decision 17-UI-82956 affirmed decision # 101306; and Hearing Decision 17-UI-82989 modified decision # 110708 to deny benefits from March 5, 2017 to April 22, 2017 and allow benefits from April 23, 2017 to April 29, 2017. On May 30, 2017, Hearing Decisions 17-UI-82961, 17-UI-82944, 17-UI-82956 and 17-UI-82989 became final without claimant having filed timely applications for review with the Employment Appeals Board (EAB). On June 19, 2017, claimant filed late applications for review of all four hearing decisions.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-82961, 17-UI-82944, 17-UI-82956 and 17-UI-82989. For case-tracking purposes, this decision is being issued in quadruplicate (EAB Decisions 2017-EAB-0738, 2017-EAB-0739, 2017-EAB-0740 and 2017-EAB-0741).

FINDINGS OF FACT: (1) Each of the four administrative decisions the Department mailed to claimant on April 6, 2017 stated either, “**IMPORTANT:** If you were paid benefits for any week covered by this decision, you may have to pay us back. You’ll get information about how much you owe and how to pay us back, after the appeal period” or “**NOTICE:** This decision results from information obtained after the original decision to pay or not pay benefits, and may create an overpayment if you were previously allowed benefits. If this decision becomes final, and you were overpaid benefits, you will be notified of the amount.”

(2) Each of the four hearing decisions in this case affirmed the administrative decision that denied him benefits, or modified the administrative decision to expand the length of time claimant was deemed

ineligible for benefits. Claimant did not file timely applications for review of the four hearing decisions due to an “oversight” on his part. The oversight was that he did not realize until he received an “Overpayment Notice” from the Department that the decisions involved in these cases would create an overpayment that he would have to repay.

CONCLUSIONS AND REASONS: Claimant did not establish good cause to file an untimely application for review, and his late applications for review must be dismissed.

ORS 657.270(6) required claimant’s applications for review to be filed no later than May 30, 2017; they were filed on June 19th, as shown by the receipt date stamped upon the faxed applications by the employee who received them. OAR 471-041-0065 (October 29, 2006). OAR 471-041-0070 (October 29, 2006) provides, in pertinent part:

(1) An application for review is timely if it is filed within 20 days of the date that OAH mailed the hearing decision sought to be reviewed. EAB shall dismiss a late application for review, unless the filing period is extended in accordance with this rule.

(2) The filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875.

(a) "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing.

Claimant missed the deadline for filing the applications for review in these cases because he did not realize that the decisions, all of which found him to be ineligible for benefits for certain periods of time, would result in an overpayment. In order for claimant’s failure to realize the consequences of the decisions in this case to constitute good cause for the late filing, he must show that it was not within his reasonable control to understand that the decisions could result in an overpayment. The information generally available to claimant and the information specifically provided to him are determinative of whether or not it was within claimant’s reasonable control to realize he might be overpaid. The Department’s claimant handbook, available to the public via the Department’s website, includes a section called “What if my benefits are denied?” that explains, “If you’re denied benefits, you will receive a written administrative decision giving the details of the denial; this includes the dates of denial, the reason for denial . . . Read your decision carefully and contact the department with any questions you have about the content of the decision . . . If benefits were previously paid for any week covered by a denying decision, you’re overpaid . . . It is your responsibility to repay any overpaid amount . . .”¹ In these cases specifically, the Department advised claimant in writing that all four of the administrative decisions in this case would result in an overpayment for the weeks at issue in each of the decision if claimant had been paid. Because claimant was notified of the possible overpayment for the weeks at issue in all four of these cases, and information about which weeks the Department paid benefits to

¹ We take notice of this generally cognizable fact, which is contained on the Employment Department website. http://www.oregon.gov/EMPLOY/Unemployment/Claimant_Handbook/Pages/Section-6-Denial-of-Benefits0404-5174.aspx. 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 noticed fact will remain in the record.

claimant was available to claimant either by checking his payment records or his bank account or reliacard, it was not beyond his reasonable control to realize that he might be overpaid based on the decisions at issue and file timely applications for review of the hearing decisions that denied him benefits.

Claimant did not otherwise suggest that filing timely applications for review in these cases was the result of circumstances beyond his reasonable control. Although claimant suggested that repayment of the overpaid benefit amounts would be a hardship for him, the applicable laws and rules do not excuse late filings on that basis. However, claimant may opt to report his financial services to the Department's Overpayment office and inquire whether there are any programs that might assist him with his obligation to repay the overpayment, or any payment plans that might help him make any payments required.

Good cause to extend the filing deadline in these cases has not been shown for the reasons explained. Claimant's late applications for review are, therefore, dismissed.

DECISION: The applications for review filed June 19, 2017 are dismissed. Hearing Decisions 17-UI-82961, 17-UI-82944, 17-UI-82956 and 17-UI-82989 remain undisturbed.

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

DATE of Service: June 21, 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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