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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-1017</p>
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Affirmed
Late Request for Hearing Dismissed ~ Overpayment

PROCEDURAL HISTORY: On March 30, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from January 22, 2017 to March 18, 2017 (decision # 83821). On April 19, 2017, decision # 83821 became final without claimant having filed a timely request for hearing. On May 11, 2017, the Department served notice of an administrative decision assessing a \$4,130 overpayment claimant was required to repay (decision # 144347). On May 16, 2017, claimant filed a late request for hearing on decision # 83821 and a timely request for hearing on decision # 144347. On August 17, 2017, ALJ Meerdink conducted two hearings, and on August 18, 2017 issued Hearing Decision 17-UI-90687, dismissing claimant's late request for hearing on decision # 83821, and Hearing Decision 17-UI-90688, affirming the Department's assessment of a \$4,130 overpayment claimant was required to repay. On August 24, 2017, claimant filed timely applications for review of both decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-90687 and 17-UI-90688. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-1016 and 2017-EAB-1017).

FINDINGS OF FACT: (1) On January 25, 2017, claimant filed an initial claim for unemployment insurance benefits. He claimed weekly benefits from January 29, 2017 to March 18, 2017, the weeks at issue. When claiming benefits, claimant reported to the Department that he actively sought work during each week claimed. Based in part on those reports the Department paid claimant \$4,130 in benefits.

(2) The March 30, 2017 notice of decision # 83821 was mailed to claimant's address of record and delivered in the ordinary course of the mail. Claimant only checked his mail once or twice a month and did not promptly go through the mail he received. Shortly before May 16, 2017 claimant went through a stack of mail that included approximately two months' worth of mail, opened the envelope containing decision # 83821, and, on May 16, 2017, requested a hearing on that decision.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant’s late request for hearing on decision # 83821 should be dismissed, and we agree that claimant is liable to repay the overpayment.

Late request for hearing. ORS 657.269(2) allows a 20-day time period for a party to request a hearing on the Department’s administrative decisions. ORS 657.875 allows that time period to be extended “a reasonable time” upon a showing of “good cause.” “Good cause” means “an excusable mistake” or “factors beyond an applicant’s reasonable control.” OAR 471-040-0010(1) (February 10, 2012).

Claimant did not file a timely request for hearing on decision # 83821 because he chose not to timely collect his mail and chose not to timely go through his mail upon receiving it. Claimant did not show that it was beyond his reasonable control to do either of those things. Although claimant’s failure to collect or process his mail in a timely manner might have been a mistake, the mistake was not “excusable” because it did not, for example, raise a due process issue or result from inadequate notice, reasonable reliance on another person, or the inability to follow directions despite substantial efforts to comply. *See e.g. Appeals Board Decision 2017-EAB-0929* (August 22, 2017); *Appeals Board Decision 2017-EAB-0838* (August 8, 2017). Because claimant has not shown good cause to extend the filing period in this matter, his late request for hearing is dismissed. Decision # 83821, establishing that claimant did not actively seek work during the weeks at issue, therefore remains undisturbed.

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.*

Claimant reported to the Department during each of the weeks at issue that he actively sought work, and the Department paid him \$4,130 in benefits as a result. However, because decision # 83821 is final as a matter of law, claimant’s weekly reports to the contrary were false. Claimant received \$4,130 in benefits he was not eligible to receive, and his receipt of those benefits was the result of his false reports about his work search activities. Regardless of his knowledge or intent in making reports that turned out to be false, claimant is liable to repay the overpaid benefits to the Department.

DECISION: Hearing Decisions 17-UI-90687 and 17-UI-90688 are affirmed.

J. S. Cromwell and D. P. Hettle.

DATE of Service: September 18, 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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