

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1062

Hearing Decision 17-UI-90952 Affirmed
Request for Hearing Dismissed
Hearing Decision 17-UI-90951 Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On April 5, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of December 25, 2016 through January 7, 2017 (decision # 81045). That decision stated that to be timely a request for hearing needed to be filed on or before April 25, 2017. On April 25, 2017, decision # 81045 became final without a request for hearing having been filed. On May 19, 2017, the Department served notice of an administrative decision assessing a \$1,134 overpayment based on decision # 81045 (decision # 82018). On May 30, 2017, claimant filed an untimely request for hearing on decision # 81045 and a timely request for hearing on decision # 82018. On August 15, 2017 at 1:30 p.m., ALJ Wyatt conducted a hearing on the timeliness of claimant's request for hearing on decision # 81045, and at 2:30 p.m. conducted a hearing on the merits of decision # 82018. On August 23, 2017, the ALJ issued two hearing decisions, the first dismissing claimant's request for hearing on decision # 81045 (Hearing Decision 17-UI-90952), and the second affirming decision # 82018 (Hearing Decision 17-UI-90951). On September 6, 2017, claimant filed applications for review of Hearing Decisions 17-UI-90952 and 17-UI-90951 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-90952 and 17-UI-90951. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-1061 and 2017-EAB-1062).

FINDINGS OF FACT: (1) Sometime before December 25, 2016, claimant filed an initial claim for benefits. That claim was determined valid with a weekly benefit amount of \$567. Claimant claimed benefits for the weeks of December 25, 2016 through January 7, 2017 (weeks 52-16 through 01-17), the weeks at issue.

(2) For the weeks at issue, claimant certified to the Department that he actively sought work during each of the two weeks at issue. Absent this certification, claimant would not have been paid benefits for either week. Claimant was paid \$567 for each week, or a total of \$1,134 for the two weeks at issue.

(3) Sometime shortly after April 5, 2017, decision # 81045 was delivered to claimant's home address. At that time, claimant was away from his home working on the road as an audio engineer and a friend was picking up his mail for him while he was gone. Claimant returned to his home on April 14, 2017. On April 18, 2017, claimant again left his home for work on the road in Europe, without having retrieved from his friend the mail that accumulated for him after April 5, 2017. On April 29, 2017, claimant returned to his home for a second time.

(4) Sometime during the week of April 30, 2017 through May 6, 2017, claimant picked up his mail from his friend. At that time, claimant received and read decision # 81045. Claimant did not request a hearing on decision # 81045 at that time because it did not specify that he owed money to the Department and did not seek to collect money from him. Claimant did not think decision # 81045 needed his rapid action.

(5) Sometime after May 19, 2017, claimant received decision # 82018. Because decision # 82018 sought to collect an overpayment based on decision # 81045, claimant realized that, in addition to challenging the merits of decision # 82018, he needed to challenge the merits of decision # 81045 if he wanted to avoid repaying benefits to the Department. On May 30, 2017, claimant filed a late request for hearing on decision # 81045. May 30, 2017 was the 24th day after May 6, 2017, the latest date on which he would have received and read decision # 81045.

CONCLUSIONS AND REASONS: Claimant did not show that he filed the request for hearing on decision # 81045 within seven days after he was aware of its substance and conclusion, and for this reason the request for hearing on decision # 81045 is dismissed. Claimant was paid \$1,134 in benefits to which he was not entitled and is liable to repay those benefits to the Department or to have them deducted from any future benefits otherwise payable to him.

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 the decision 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. Claimant filed his request for hearing on decision # 81045 on May 30, 2017, which was 55 days after that decision was mailed or 30 days after the last day on which the request for hearing would have been timely filed. Claimant's request for hearing was late.

Assuming there was good cause for claimant's late filing of the request for hearing on decision # 81045, the filing period may be extended only seven days after the factors that prevented claimant from a timely filing ceased to exist or, in this case, when claimant received and read decision # 81045 and reasonably should have been aware of its implications and his right to request a hearing contesting its conclusions. At the latest, claimant was so aware by May 6, 2017. Accordingly, the deadline by which claimant was required to file a request for hearing on decision # 81045 may be extended seven days from that date, or until May 13, 2017. Because claimant's request for hearing was not filed until May 30, 2017, well after May 13, 2017, it was not filed within a reasonable time. Because claimant did not file his request for hearing with a "reasonable time," and there is no basis to otherwise extend the period in which he was required to file the request, claimant's request for hearing on decision # 81045 must be dismissed.

Overpayment. ORS 657.155(1)(c) provides that individuals are eligible to receive benefits only if, among other things, they actively sought work during the week for which benefits are claimed. ORS 657.310(1) provides that if an individual receives benefits to which the individual is not entitled because the individual, *regardless of the individual's knowledge or intent*, made or caused to be made a false statement or misrepresentation of a material fact or failed to disclose a material fact, the individual is liable to repay the amount of those benefits to the Department or to have the amount of those benefits deducted from any future benefits otherwise payable to the individual (emphasis added).

Claimant did not dispute that he was paid \$1,134 in benefits for the weeks at issue. Claimant also did not dispute that he would not have been paid benefits for those weeks absent his certifications that he actively sought work during those weeks. Audio at 2:30 p.m. Hearing at ~11:58. Decision # 81045 is final and it establishes as a matter of law both that claimant did not actively seek work during the weeks at issue, and that claimant's certifications to the contrary were inaccurate and false. Accordingly, even if claimant was not aware that the information he provided to the Department in his weekly claim reports was incorrect, he is still liable to repay the \$1,134 in benefits that the Department paid to him during the weeks at issue or to have the amount of those benefits deducted from any future benefits otherwise payable to him.

DECISION: Hearing Decisions 17-UI-90952 and 17-UI-90951 are affirmed.

J. S. Cromwell and. P. Hettle.

DATE of Service: October 5, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.