

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0067

Affirmed
Late Request for Hearing Dismissed
Overpayment, No Penalties

PROCEDURAL HISTORY: On November 7, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from June 11 through September 9, 2017 (decision # 120115). On November 8, 2017, the Department served notice of an administrative decision concluding that claimant therefore was overpaid \$3,133 in benefits that she must repay, and that she willfully misrepresented her availability for work, and therefore is disqualified for 22 weeks of future benefits and assessed a \$939 monetary penalty (decision # 195704). On November 27, 2017, decision # 120115 became final without claimant having filed a request for hearing on that decision. On November 28, 2017, claimant filed a late request for hearing on decision # 120115 and a timely request for hearing on decision # # 195704. On December 22, 2017, ALJ Wyatt conducted hearings, and on December 28, 2017 issued Hearing Decision 17-UI-99817 dismissing claimant's late request for hearing on decision # 120115, and Hearing Decision 17-UI-99874 concluding that claimant was overpaid \$3,133 in benefits that she must repay the Department, but that she did not willfully misrepresent her availability for work, and therefore is not disqualified for future benefits or assessed a monetary penalty. On January 17, 2018, claimant filed timely applications for review of Hearing Decisions 17-UI-99817 and 17-UI-99874 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-99817 and 17-UI-99874. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0067 and 2018-EAB-0068).

LATE REQUEST FOR HEARING ON DECISION # 120115

FINDINGS OF FACT: (1) On November 7, 2017, the Department mailed notice of decision # 120115 to claimant's address in Mount Angel, Oregon. Claimant received the decision within a few days after it was mailed. Decision # 120115 stated that any appeal from the decision had to be filed on or before November 27, 2017 to be timely. Claimant read that portion of the decision.

(2) On November 8, 2017, the Department mailed notice of decision # 195704 to claimant's same address. Claimant received the decision within a few days after it was mailed. Decision # 195704 stated that any appeal from the decision had to be filed on or before November 28, 2017 to be timely. Claimant read that portion of the decision.

(3) After reading both decisions, claimant mistakenly believed they were duplicates and that she had until November 28, 2017 to request a hearing. Claimant became busy and forgot about the decisions until about November 28, 2017, when she called the Department to request a hearing. Claimant was told the decisions were not duplicates, and that her request for hearing on decision # 120115 was late. Claimant stated that she was confused as to why she had received two decisions and thought her request for hearing was due that day.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 120115 is dismissed as untimely without good cause.

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.

Here, claimant filed her request for hearing on decision # 120115 one day late because she mistakenly believed that it and decision # 195704 were duplicates, and that she had until November 28, 2017 to request a hearing. However, it was within claimant's reasonable control to read the decisions carefully enough to determine that they were not duplicates and that she had to file her request for hearing on decision # 120115 by November 27, 2017, or at least contact the Department before November 28, 2017 to determine whether the filing deadline stated in Decision # 120115 was accurate. And although claimant's failure to file a timely request for hearing was due to a mistake on her part, it was not an "excusable" mistake because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Claimant's late request for hearing on decision # 120115 therefore is dismissed as untimely without good cause.

OVERPAYMENT AND PENALTIES

EAB reviewed the entire record of the hearing on decision # 195704. On *de novo* review and pursuant to ORS 657.275(2), Hearing Decision 17-UI-99874 is **adopted**.¹ Claimant was overpaid \$3,133 in benefits that she must repay the Department, but is not disqualified for future benefits or assessed a monetary penalty.

DECISION: Hearing Decisions 17-UI-99817 and 17-UI-99874 are affirmed.

¹ However, we note that contrary to the ALJ's statement in Hearing Decision 17-UI-99874 that no exhibits were admitted into evidence at the hearing, the ALJ, in fact, admitted documents offered by the Department and marked them as Exhibit 1.

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

DATE of Service: February 2, 2018

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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