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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 2018-EAB-0104</p>
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Affirmed
Late Request for Hearing Dismissed
Overpayment

PROCEDURAL HISTORY: On November 9, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from October 22, 2017 to November 4, 2017 (decision # 152524). On November 29, 2017, decision # 152524 became final without claimant having filed a timely request for hearing. On December 12, 2017, the Department served notice of another administrative decision, based upon decision # 152524, assessing a \$441 overpayment that claimant was required to repay (decision # 111716). On December 15, 2017, claimant filed a late request for hearing on decision # 152524 and a timely request for hearing on decision # 111716. On January 10, 2018, ALJ Murdock conducted two hearings, and on January 12, 2018, issued Hearing Decision 18-UI-100848, dismissing claimant's late request for hearing on decision # 152524, and Hearing Decision 18-UI-100847, affirming decision # 111716. On January 19, 2018, claimant filed 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 18-UI-100847 and 18-UI-100848. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0104 and 2018-EAB-0105).

With her application for review, claimant argued, "You said that my request for a hearing was dismissed because I failed to appear at the hearing. I failed to appear at the hearing because I never received a request to appear at any hearing. I believe that I was never over-paid because I did everything that I was told to do on line." We note that claimant did, in fact, appear at two hearings, one on each of the cases under review, apparently following her receipt of two notices instructing her to appear at those hearings. We also note that neither of the hearing decisions under review dismissed claimant's request for a hearing because she failed to appear at a hearing, nor do Department and Office of Administrative Hearings records suggest that there is any other matter in which claimant's request for hearing was dismissed because she failed to appear at a hearing. Claimant's remaining argument regarding the overpayment is addressed, below.

FINDINGS OF FACT: (1) Claimant filed weekly claims for benefits for the weeks of October 22, 2017 to November 4, 2017. Each week she claimed, she reported to the Department that she had actively sought work during the weeks claimed. The Department paid claimant \$441 in benefits based in part upon her reports to the Department that she actively sought work.

(2) Claimant received notice of decision # 152524 shortly after the Department mailed it to her on November 9, 2017. The second page of decision # 152524 was entitled “**APPEAL RIGHTS**” and stated that claimant had the right to appeal the decision if she thought it was incorrect and instructed her how to do so using an attached form. (Emphasis in original.) The decision also advised claimant that she might have to pay back any benefits paid to her for weeks covered by decision # 152524 “after the appeal period,” stated that “[t]he appeal period ends on November 29, 2017,” and advised her to contact the Department “immediately” if she did not understand the decision.

(3) Claimant disagreed with decision # 152524 because she thought she had actively sought work during the weeks at issue in that decision. However, she either did not notice or did not understand the information contained in decision # 152524 about requesting a hearing, and did not request a hearing at that time. On November 16, 2017, November 22, 2017 and November 29, 2017, claimant spoke with Department employees about her benefits, but she did not dispute the decision or request a hearing during those conversations.

(4) Claimant received notice of decision # 111716, which was based on decision # 152524 and assessed an overpayment, shortly after it was mailed to her on December 12, 2017, and, on December 15, 2017, filed a late request for hearing on decision # 152524.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant’s late request for hearing should be dismissed, and that claimant was overpaid benefits as a matter of law and is liable to repay the overpayment to the Department or have it deducted from future benefits otherwise payable.

Late request for hearing. ORS 657.269 provides that individuals have 20 days after the Department mails notice of an administrative decision to request a hearing on that decision, or the decision becomes final. ORS 657.875 provides that the 20-day filing period may be extended a reasonable time upon a showing of “good cause.” “Good cause” includes “an excusable mistake” or “factors beyond an applicant’s reasonable control,” such as failing to receive a document because the Department mailed it to the wrong address despite having the correct address or unanticipated or unforeseeable loss of telephone service. OAR 471-040-0010(1) (February 10, 2012). However, “good cause” does not include “[n]ot understanding the implications of a decision or notice when it is received.” OAR 471-040-0010(1)(b)(B).

On this record, the Department correctly mailed decision # 152524 to claimant, she received it, she read that it denied her benefits, and she disagreed with the decision because she thought she had correctly claimed the weeks at issue in it. It is not clear exactly why claimant did not request a hearing on that decision within the 20-day time period allowed by law given her disagreement with it, but it appears that she might not have understood the implications of the decision, might not have read the notice of appeal rights on the decision, or might have read the notice of appeal rights included on that decision without understanding them. In any event, thoroughly reading and/or seeking help to understand a decision are the sorts of things that are generally considered to be within an individual’s reasonable control, and

OAR 471-040-0010 specifically states that not understanding the implications of a decision or notice is not considered good cause. Although claimant's failure to timely file a request for hearing, or to ask for help to understand the decision or her appeal rights, were likely the result of a mistake on claimant's part, the mistake is not considered "excusable" within the meaning of OAR 471-040-0010 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.

For those reasons, claimant did not show "good cause" to extend the filing period for requesting a hearing on decision # 152524, and her late request for a hearing on decision # 152524 must therefore be dismissed. Decision # 152524, which concluded that claimant did not actively seek work from October 22, 2017 to November 4, 2017 and was not entitled to benefits during those weeks, is, therefore, final as a matter of law, and claimant is not entitled to dispute the facts or conclusions reached in that decision.

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 received \$441 in unemployment insurance benefits during the weeks covered by decision # 152524 because she reported to the Department that she actively sought work during those weeks. By operation of that decision, however, and as a matter of law, claimant did not actively seek work during those weeks and was therefore not entitled to receive those benefits, making her reports to the Department false. Regardless of claimant's knowledge or intent in making false reports to the Department about actively seeking work, she is liable to either repay the overpaid benefits to the Department or have them deducted from future benefits otherwise payable to her.

DECISION: Hearing Decisions 18-UI-100847 and 18-UI-100848 are affirmed.

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

DATE of Service: February 14, 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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