

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0196

Affirmed
Late Request for Hearing Dismissed
Overpayment Assessed

PROCEDURAL HISTORY: On November 17, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from October 29, 2017 to November 11, 2017 (decision # 143915). On December 7, 2017, decision # 143915 became final without claimant having filed a timely request for hearing. On December 21, 2017, the Department served notice of another administrative decision, based on decision # 143915, assessing a \$560 overpayment that claimant was required to repay (decision # 102507). On January 2, 2018, claimant filed a late request for hearing on decision # 143915 and a timely request for hearing on decision # 102507. On January 30, 2018, ALJ Amesbury conducted hearings, and on January 31, 2018 issued Hearing Decision 18-UI-102186 dismissing claimant's late request for hearing on decision # 143915, and Hearing Decision 18-UI-102184 affirming decision # 102507. On February 20, 2018, claimant filed applications for review of both hearing 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-10286 and 18-UI-10284. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0196 and 2018-EAB-0195).

FINDINGS OF FACT: (1) Claimant filed an initial claim for unemployment insurance benefits on December 2, 2016. Claimant's weekly benefit amount was \$280.

(2) On November 2, 2017 claimant reopened his initial claim for benefits, and claimed benefits for the weeks from October 29, 2017 through November 11, 2017 (weeks 44-17 and 45-17), the weeks at issue. When claiming benefits for each week at issue, claimant reported to the Department that he had actively sought work. The Department therefore paid claimant a total of \$560 in benefits for the weeks at issue.

(3) On November 2, 2017, claimant provided a mailing address to the Department. Claimant's address has not changed.

(4) On November 17, 2017, the Department mailed administrative decision # 143915 to the address claimant provided to the Department on November 2, 2017. The decision stated that claimant had until December 7, 2017 to request a hearing on decision # 143915. Decision # 143915 was delivered to claimant's address, but claimant never saw the decision.

(5) On December 21, 2017, the Department mailed decision # 102507 to the same address that it mailed decision # 143915. Claimant received notice of the decision in the mail.

(6) On January 2, 2018, claimant called the Department and requested a hearing on decisions # 143915 and # 102507.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant did not show good cause for filing a late request for hearing on decision # 143915. Claimant's late request for hearing on decision # 143915 therefore is dismissed. We also agree with the Department and the ALJ that claimant was overpaid \$560 in benefits that he must repay the Department.

Late Application for Review. 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.

At hearing, claimant did not dispute that decision # 143915 was mailed to him on November 17, 2017 and delivered to the address he provided the Department.¹ However, claimant believed that the decision got "mixed with his son's mail and possibility got thrown out with junk mail." Recording at 20:00-21:00. Claimant's request for hearing on decision # 143915 was filed three and a half weeks late, and the processing of his mail was a factor within his reasonable control. And although claimant apparently made a mistake when processing his mail, 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. Therefore, claimant has failed to establish good cause to extend the filing deadline.

Claimant's late request for hearing on decision # 143915 therefore is dismissed. Decision #143915 is final and remains in effect. Claimant did not actively seek work from October 29, 2017 to November 11, 2017, and therefore was not eligible to receive benefits for those weeks, as a matter of law.

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.*

¹ Documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary. *See generally* OAR 137-003-0520(10) (January 31, 2012); ORS 40.135(1)(q).

Claimant received \$560 in unemployment insurance benefits for the weeks covered by decision # 143915. When claiming benefits each of those weeks, claimant reported to the Department that he had actively sought work. The Department paid claimant the benefits based, in part, on those reports, which, pursuant to decision # 143915, were false as a matter of law. Regardless of claimant's knowledge or intent when claiming benefits, he is liable to either repay the \$560 in benefits to the Department or have them deducted from future benefits otherwise payable to him.

DECISION: Hearing Decisions 18-UI-102186 and 18-UI-102184 are affirmed.

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

DATE of Service: March 20, 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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