

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0612

Affirmed
Late Request for Hearing Dismissed
\$165 Overpayment

PROCEDURAL HISTORY: On March 19, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from February 11, 2018 to March 10, 2018 (decision # 162308). On April 9, 2018, decision # 162308 became final without claimant having filed a timely request for hearing. On May 8, 2018, the Department served notice of an administrative decision concluding claimant was overpaid \$165 in benefits and was liable to have the overpayment deducted from future benefits otherwise payable (decision # 105837). On May 10, 2018, claimant filed a late request for hearing on decision # 162308 and a timely request for hearing on decision # 105837.¹ On May 17, 2018, the Office of Administrative Hearings (OAH) mailed notice of two hearings scheduled for May 31, 2018. On May 31, 2018, ALJ Wyatt conducted two hearings, and on June 8, 2018 issued Order No. 18-UI-110953, dismissing claimant's late request for hearing, and Order No. 18-UI-110954, affirming decision # 105837. On June 14, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 18-UI-110953 and 18-UI-110954. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0613 and 2018-EAB-0613).

With respect to the overpayment case (decision # 105837, Order No. 18-UI-110954) EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the Order under review is **adopted**. Claimant is liable to have the \$165 overpayment deducted from future benefits that are otherwise payable. The remainder of this decision focuses only on claimant's late request for hearing on decision # 162308.

¹ On May 8, 2018, the Department also served notice of another decision assessing a \$1,217 overpayment, and on May 10th claimant filed a timely request for hearing by telephone on that decision. Through what appears to have been administrative oversight, however, it appears that no hearing has yet been scheduled or held on that matter. Claimant's May 10th request for hearing on the \$1,217 overpayment has been referred to OAH for processing. If claimant has any questions about her request for a hearing on the \$1,217 overpayment, she should direct her inquiries to OAH.

FINDINGS OF FACT: (1) On March 19, 2018, the Department mailed notice of decision # 162308 to claimant at her address of record. The decision stated on page 1: “Appeal Deadline Date: April 09, 2018” and “You are DENIED benefits on this claim for the period beginning February 11, 2018 until the reason for your denial has ended.” The decision stated on page 2: “You have the right to appeal this decision if you do not believe it is correct. You may return the attached form or contact us to request a hearing by telephone. Your request for appeal must be received no later than April 9, 2018. This decision **DENIES** benefits.”

(2) Claimant received the decision and did not read it. She assumed it was a letter stating that she had correctly claimed benefits. Claimant put the decision aside without reading it.

(3) On April 4, 2018, claimant called the Department to check on the status of her claim. During the call, a Department employee told claimant that she had been denied benefits because of the March 19th decision and could appeal the March 19th decision if she disagreed with it. Claimant told the employee that she would check her mail and read the decision.

(4) Later on April 4, 2018, claimant called the Department again after reading the decision. During the second call, claimant told Department employees that her circumstances had changed and she was available for work. The Department employee transferred claimant to an adjudicator who discussed claimant’s availability with her and ended the denial period.

(5) Claimant did not request a hearing on April 4th. Claimant mistakenly thought her April 4th telephone call with the adjudicator was a hearing. Claimant assumed that because the denial period had ended that everything had been resolved even though she had not requested a hearing on the March 19th decision.

(6) On approximately May 10, 2018, claimant received administrative decisions from the Department that assessed overpayments of \$165 and \$1,217. That day, claimant called the Department and filed requests for hearing on the two overpayment decisions and the March 19th decision.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant’s late request for hearing should be dismissed.

ORS 657.269 provides that parties have 20 days from the date an administrative decision is issued to file a timely request for hearing. ORS 657.875 provides that the 20-day time period may be extended “a reasonable time” upon a showing of “good cause.” OAR 471-040-0010 (February 10, 2012) defines “good cause” as an excusable mistake or factors beyond the applicant’s reasonable control. “Good cause” does not include not understanding the implications of a decision or notice when it is received. OAR 471-040-0010(1)(b)(B).

It appears that claimant filed a late request for hearing in part because she set aside the March 19th decision without reading it. She therefore did not understand the implications of that decision, such as the fact that it denied her benefits, that the denial would become final unless she requested a hearing on that decision, and that if the decision became final it could result in her being overpaid benefits. The rule defining “good cause” specifically states that good cause does not include when a party fails to file a timely request for hearing because of their failure to understand the implications of a decision.

Claimant therefore did not have good cause for the late request for hearing because she put it aside without reading or understanding it.

Claimant also filed a late request for hearing in part because she failed to understand on April 4th that she needed to request a hearing on the March 19th decision and not just speak with someone about ending her disqualification. Those circumstances do not amount to good cause, either. Claimant was specifically told on the phone on April 4th that she would need to request a hearing if she disagreed with the decision. The decision itself instructed her that she would be denied benefits from February 11th and until she ended the denial and that she needed to appeal the decision if she disagreed with it. It does not appear that the employees with whom claimant spoke on April 4th told her that she did not need to request a hearing or “appeal” the decision after reporting her changed circumstances that ended her benefit denial period. It also does not appear that claimant disagreed with the March 19th decision during the second April 4th call, as she called to report her changed circumstances and not that she had disagreed with the decision during the period of time it covered.

For those reasons, it does not appear on this record that claimant’s failure to timely “appeal” the decision or request a hearing on it was due to a factor beyond her control. Although her failure to file a timely request for hearing was likely the result of a mistake on claimant’s part, it was not an “excusable mistake” within the meaning of the administrative rules 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 must therefore be dismissed, and decision # 162308 remains undisturbed.

DECISION: Order Nos. 18-UI-110953 and 18-UI-110954 are affirmed.

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

DATE of Service: June 26, 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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