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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0921

Reversed
Late Request for Hearing Allowed

PROCEDURAL HISTORY: On April 11, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that, in mid-May 2017, claimant quit working for Court Street Christian Church of Salem with good cause, and therefore was not disqualified from receiving benefits based on that work separation (decision # 144340). On April 18, 2018, the Department served notice of an administrative decision concluding that claimant willfully failed to report that work separation and underreported earnings from April 9 through June 3, 2017 to obtain benefits, and therefore was overpaid \$862 in benefits, disqualified from 10 weeks of future benefits, and assessed a \$258.60 monetary penalty (decision # 195523). On May 1, 2018, decision # 144340 became final without a request for hearing having been filed. On May 8, 2018, decision # 195523 became final without claimant having filed a request for hearing.

On September 11, 2018, claimant filed a late request for hearing on decision # 195523. On September 12, 2018, ALJ Kangas issued Order No. 18-UI-116409, dismissing claimant's request for hearing as untimely without a showing of good cause, subject to her right to renew the request by filing a response to an appellant questionnaire by September 26, 2018. On September 19, 2018, claimant filed a timely response to the appellant questionnaire. ALJ Kangas reviewed claimant's response and, on September 20, 2018, issued Order No. 18-UI-116962, re-dismissing claimant's request for hearing as untimely without good cause. On September 24, 2018, claimant filed a timely application for review of Order No. 18-UI-116962 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant filed her most recent initial claim for benefits on April 5, 2017 and stopped claiming benefits after on June 5, 2017.¹ The Department mailed decision # 195523 to claimant's address of record on April 18, 2018.

(2) Claimant filed her request for hearing on decision # 195523 late because she rarely checks her mail, which caused her mailbox to get too full and her mail carrier to return the decision to the post office. Claimant rarely checks her mail because almost all she ever receives is junk mail, and she did not expect mail from the Department over 10 months after she stopped claiming benefits.

(3) Claimant first became aware of decision # 195523 on September 10, 2018. She filed a request for hearing on decision # 195523 the next day.

CONCLUSIONS OF LAW: Claimant's late request for hearing on decision # 195523 is allowed.

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." "Good cause" includes factors beyond an applicant's reasonable control or an excusable mistake, and does not include the failure to receive a document due to not notifying the Department or Office of Administrative Hearings (OAH) of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal. OAR 471-040-0010(1) (February 10, 2012). "A reasonable time" is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0010(2).

In Order No. 18-UI-116962, the ALJ found that claimant filed her request for hearing on decision # 195523 late because she rarely checks her mail, which caused her mailbox to get too full and her mail carrier to return the decision to the post office.² The ALJ then dismissed claimant's late request for hearing as without good cause, asserting that claimant did not provide any information, or therefore show, that an excusable mistake or factors beyond her control prevented her from timely checking for mail.³

We agree with the ALJ that claimant filed her late request for hearing because she rarely checks her mail and that it was within claimant's reasonable control to check for her mail more often. However, the Department's mailing of decision # 195523 to claimant over 10 months after she stopped claiming benefits was a factor or circumstance beyond her reasonable control. And even if claimant had received decision # 144340 in the mail, that decision concluded that she was not disqualified from receiving benefits based on her work separation from Court Street Christian Church of Salem, so claimant did not know, and had no reason to know, that an overpayment decision was pending. Thus, although claimant's failure to check her mail more often was, in retrospect, a mistake, it was an excusable mistake under the

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

² Order No. 18-UI-116962 at 2.

³ *Id.*

circumstances. Claimant's late request for hearing on decision # 195523 was, therefore, with good cause.

The remaining issue is whether claimant filed her late request for hearing on decision # 195523 within a reasonable time. Claimant filed her request for hearing one day after she first became aware of the decision, and therefore within seven days after the circumstances that prevented a timely filing ceased to exist. Claimant filed her late request for hearing within a reasonable time.

Claimant's late request for hearing on decision # 195523 is allowed.

DECISION: Order No. 18-UI-116962 is set aside, as outlined above.

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

DATE of Service: October 11, 2018

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