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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
2019-EAB-0098-R

Request for Reconsideration Dismissed
EAB Decision 2019-EAB-0098 Undisturbed

PROCEDURAL HISTORY: On May 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request to adjust her claim determination, and add wages and hours of work to her claim for purposes of establishing a valid claim and the minimum and maximum benefit amounts payable under such a claim. On May 19, 2017, claimant filed a timely request for hearing. On December 18, 2018, ALJ Wyatt conducted a hearing, and on December 26, 2018 issued Order No. 18-UI-121785, affirming the Department's decision.¹ On January 15, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).² On February 8, 2019, EAB issued Appeals Board Decision 2019-EAB-0098, affirming Order No. 18-UI-121785. On March 1, 2019, the parties jointly filed a request for reconsideration.³

¹ The record does not show why claimant's timely request for hearing was delayed from the May 19, 2017 filing date until December of the following year.

² Claimant's written argument included a request that anything presented to the parties in writing be provided in 14-point font or larger in order to accommodate the employer's need for large print. This decision is therefore being issued in 14-point font.

³ On March 1, 2019, EAB mailed the parties a letter stating that EAB would in fact review the parties' request for reconsideration. That letter was sent in error for the reasons explained herein.

CONCLUSIONS AND REASONS: The parties' request for reconsideration is dismissed as untimely.

ORS 657.290(3) gives EAB the authority to reconsider its decisions. OAR 471-041-0125 (October 29, 2006) provides:

(1) Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice.

(2) The request is subject to dismissal unless it:

(a) Includes a statement that a copy has been provided to the other parties. Example: "I certify that on I mailed by first class mail a copy of this document to the opposing party, addressed as follows: ABC Company, 123 Main St., Portland, OR, 9XXXX."

(b) Is filed on or before the 20th day after the decision sought to be reconsidered is mailed.

The parties' request for reconsideration alleged EAB made errors of material fact or law when reaching EAB Decision 2019-EAB-0098 and the request met the requirement that it be provided to all parties. However, it was not filed in a timely manner. The parties are requesting reconsideration of an EAB decision served on February 8, 2019. The 20-day deadline for filing a request for reconsideration was therefore February 28, 2019. The parties filed their request on March 1, 2019. The parties' request for reconsideration is therefore late, and must be denied.

Even if the parties' request had been timely filed, the outcome of this matter would remain the same. The parties alleged EAB erred by stating "that we asked you [EAB] to investigate, intervene, or take jurisdiction over cases involving the IRS, matters previously handled by other entities concerning claims under ORS Chapter 656, and matters involving the EAB. None of the alleged facts are true. And since they were considered in making your decision, the decision should be reversed." The record shows that EAB did not err.

The application for review in this case was accompanied by a 12-page document titled "Legal Memorada [*sic*] and Arguments." That document was considered as a "written

argument” under OAR 471-041-0080. In that document, the parties referenced the employer’s OSIPM and ICP benefits and asked EAB about the parties’ remedy for errors related to those matters. The parties referenced erroneous orders issued by other agencies, and the employer’s Medicaid benefits and inability to receive TANF, ERDC, and food stamps with cash benefits, and asked EAB why the processes related to those denials were acceptable. The parties referenced the ALJ’s failure to consider evidence from a January 24, 2016 hearing in a different matter, and facts related to being discharged by DHS. The parties also asked EAB to answer 24 specific questions related to the parties’ right to marry that involved Medicaid, DHS, ERISA, DHS, Lane County residents’ access to Oregon Public Benefits, HHS, SMS, OSHA, BOLI, EEOC and other agencies. The parties raised an issue of wrongful discharge from DHS. The parties suggested that EAB “should have jurisdiction to hear complaints under the Public Employee Collective Bargaining Act.”

The parties also alleged DHS fraud, and mentioned “rogue county employees” acting outside their authority, and a related order that “must be reviewed and overturned,” and stated that “since it’s in the Boards [*sic*] discretion to do so, it would be an abuse of such discretion to choose not to.” The parties also referred to a Water Conservation Board intervening on behalf of other parties in another case, and suggested that EAB intervene on the parties’ behalf “in the unnecessary Federal case (6:17-cv-00770) we attempted to file on our own.” In other words, the parties asked EAB to intervene in a DHS and county matter over which EAB lacks jurisdiction.

The parties asked that DHS “be punished by barring it’s [*sic*] authority to exercise it’s [*sic*] discretion in certain circumstances such as this” and either transfer that matter to a jury trial, the Oregon Supreme Court, the Court of Appeals, or the US District Court. These are just a few of the requests the parties’ argument made of EAB, quoted directly from the parties’ argument. EAB did not err in noting that the parties had so argued. As noted in EAB Decision 2019-EAB-0098, EAB does not have jurisdiction to address any of those matters, the matters are outside the scope of EAB’s review, and EAB did not err in declining to address them or take jurisdiction in the manner the parties urged.

The parties next alleged that EAB erred by “assert[ing] that the narrow issue before [EAB] was the record compiled on December 19, 2018 to determine whether the claimant’s# [*sic*] wages from work for the employer are excluded from the definition of “employment as set forth in ORS 657.060(1).” Citing to ORS 657.275(1), the parties argued that EAB “did remand the matter back to the ALJ because it found that additional evidence was necessary for it to reach its decision” and “[t]hat remand has been consolidated with the underlying matter in this case which **should** clarify who the

claimants [*sic*] **actual** employer of record [] is and is presently set to be heard on March 12, 2019. The EAB did promptly notify the claimant of this fact and the claimant recorded the phone call for evidence.” (Emphasis in original.) The parties stated that “EAB cannot both affirm and remand” a case and should either reverse or set aside the decision in this case.

The issue over which EAB had jurisdiction in this matter originated in the Department’s denial of claimant’s request for an adjustment of her claim determination under ORS 657.060 as set forth in the Department’s May 10, 2017 decision. Based upon claimant’s request for hearing, the matter was set for a hearing, and the issue noticed for that hearing was “Whether claimant’s claim determination reflects all of the wages or hours worked in subject employment in the base year to which claimant is entitled.” The ALJ held a hearing, at which the claim determination and base year wage issues were developed. EAB’s authority is to “perform de novo review on the record.” ORS 657.275(2). That means that EAB reviews the record, finds its own facts based upon evidence in the record, and reach its own conclusions based upon the application of the relevant law to the facts as developed on the record. EAB does have statutory authority under ORS 657.275(2) to address other issues raised by the record. However, the record in this matter did not raise any other actionable issues over which EAB had jurisdiction, and no additional evidence was necessary to decide the issue presented by this case. The parties have not established that EAB error occurred with respect to the scope of EAB’s review of this matter.

The parties’ assertion that EAB did in fact remand this matter is unfounded. EAB Decision 2019-EAB-0098 clearly stated that EAB “adopted” and “affirmed” the underlying ALJ Order, which denied claimant’s request for a claim redetermination. We note that Department records show that claimant is scheduled for another hearing with the Office of Administrative Hearings (OAH) on March 12, 2019 at 10:45 a.m. and that OAH, not the Employment Appeals Board, has notified the parties of that hearing and communicated with them about it. However, EAB is not involved in the March 12th case, and the March 12th hearing is not based upon an EAB remand. Regardless, the parties’ belief that EAB remanded this matter to OAH is incorrect. EAB’s decision clearly affirmed the denial of a redetermination in this case, and did not err in so doing.

The parties next argued that EAB “did NOT review the record [in this case] because if it had it would have taken notice of the evidence offered at the hearing which was the misclassification of the claimant and the supervisor by the employer of record and the fact that ORS 411.802 has been violated.” (Emphasis in original.) ORS 411.802 governs DHS compensation of a spousal care provider under certain circumstances. EAB does not

have jurisdiction over any matter related to ORS 411.802. EAB's jurisdiction is confined to unemployment insurance benefits cases. EAB reviewed the record developed at the December 18th hearing by ALJ Wyatt, and, contrary to the parties' assertion, considered that record when reaching EAB Decision 2018-EAB-0098.

Finally, the parties argue that the EAB decision "was issued without giving claimant 34 full days to submit additional arguments." Nothing in the applicable law or rules requires EAB to provide parties a 34-day period to submit arguments. OAR 471-041-0080(1) (October 29, 2006) provides that parties may submit written argument "within 20 days of the date that EAB mails or emails the notice required by OAR 471-041-0075." That notice was mailed to the parties in this case on February 1, 2019. The parties therefore had 20 days from that date – or until February 21, 2019 – to submit argument. EAB did issue its decision prior to that date, but only after having received the 12-page jointly submitted written argument from the parties. Had the parties submitted additional argument on or before the February 21, 2019 written argument deadline, EAB would have reconsidered EAB Decision 2019-EAB-0098 in light of the additional argument, just as we are reconsidering it now upon the parties request. To any extent EAB erred by issuing EAB Decision 2019-EAB-0098 before the February 21, 2019 written argument deadline expired, the error was harmless.

For those reasons, even if the parties had filed a timely request for reconsideration they did not show that EAB Decision 2019-EAB-0098 included material errors of fact or law that suggest EAB's decision was flawed or should be overturned. On reconsideration, we would therefore have adhered to EAB Decision 2019-EAB-0098 and re-affirmed the underlying order. As it stands, however, the parties' request was late and accordingly must be dismissed.

DECISION: The request for reconsideration is dismissed. EAB Decision 2019-EAB-0098-R and Order No. 18-UI-121785 remain undisturbed.

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

DATE of Service: March 8, 2019

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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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឱ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ទោរទៅ – តម្រូវការនេះគឺជាភាពប្រឆាំងប្រក្រតីរបស់រដ្ឋបាលដោយគ្មានការពិចារណា។ បើសិនជាលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះទេ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឱ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Arabic

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Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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