

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0267-R

*EAB Decision 2019-EAB-0267 Vacated
Order No. 18-UI-119840 Reversed & Remanded*

PROCEDURAL HISTORY: On August 21, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from January 28, 2018 to May 5, 2018, May 13, 2018 to June 30, 2018, July 8, 2018 to August 4, 2018, and August 12, 2018 to August 18, 2018, and denying benefits for those weeks (decision # 103147). On September 10, 2018, decision # 103147 became final without claimant having filed a timely request for hearing. On November 13, 2018, claimant filed a late request for hearing. On November 16, 2018, ALJ Kangas issued Order No. 18-UI-119840, dismissing claimant's late request for hearing subject to claimant's right to renew the request by responding to an appellant questionnaire by November 30, 2018. On November 27, 2018, claimant submitted a questionnaire response. On March 12, 2019, claimant filed an application for review with the Employment Appeals Board (EAB). On March 14, 2019, EAB issued Employment Appeals Board Decision 2019-EAB-0267, dismissing claimant's application for review as late without a showing of good cause. On April 8, 2019, claimant filed a petition for judicial review with the Oregon Court of Appeals. On July 8, 2019, claimant filed an opening brief with the Oregon Court of Appeals. On July 25, 2019, EAB filed a notice of withdrawal of order for purposes of reconsideration pursuant to ORS 183.482(6) and ORAP 4.35.

EVIDENTIARY RULING: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's November 27, 2018 questionnaire response. The additional evidence has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

FINDINGS OF FACT: (1) On September 21, 2018, the Department served notice of an administrative decision assessing a \$531.00 overpayment that claimant was not required to repay, but was liable to have deducted from future benefits payable (decision # 92049). Decision # 92049 stated in its findings that the overpayment was based upon the Department's August 21, 2018 decision (decision # 103147),

which is the decision underlying the late request for hearing issue in this case. On October 11, 2018, decision # 92049 became final without claimant having filed a timely request for hearing.

(2) On November 13, 2018, claimant filed a late request for hearing. The request for hearing stated, in relevant part, “I recently received a billing statement from you stating that I am in debt to the State of Oregon for benefits which were paid to me when I was out of work. * * * Upon contact with the State of Oregon unemployment division earlier this year after I was unable to find work. I continue to look for work and file my claim each week until it was exhausted. Currently I am unemployed and still looking for work. Please accept the request for a review of the information that you have in your file as I completed all required tasks from the time period in which I received unemployment benefits from March 2018 through August 2018.” *See* DR Exhibit 2.

(3) The Department construed claimant’s late request for hearing as a late request for hearing on both decision # 92049 and # 103147. On November 16, 2018, the Office of Administrative Hearings (OAH) issued two nearly identical orders, each of which included a nearly identical appellant questionnaire, and each of which dismissed claimant’s late request for hearing unless claimant responded to a questionnaire by November 30, 2018 to renew his late requests for hearing.

(4) On November 27, 2018, claimant responded to OAH by returning a single questionnaire, using the form that referenced decision # 92049. According to the questionnaire, claimant never received an administrative decision, and received only a billing statement requiring him to repay a \$13,000 overpayment. The questionnaire stated that claimant was not aware that an administrative decision was made or that he would have to pay back his unemployment benefits until he received the bill.

(5) Upon receipt by OAH, the questionnaire was filed with the case pertaining only to decision # 92049. OAH did not apply the questionnaire response to decision # 103147, which is the decision at issue in this case. On the basis of the statements contained within claimant’s questionnaire response, OAH issued a letter stating that the order dismissing claimant’s late request for hearing on decision # 92049 was canceled, and scheduling a hearing in that case.

CONCLUSIONS AND REASONS: Claimant filed a timely response to the appellant questionnaire dismissing his request for hearing on decision # 103147. He is entitled to a hearing about whether he had good cause for filing a late request for hearing on decision # 103147.

It is clear from the context of this case that claimant intended his questionnaire response to apply to both cases open at OAH. His original request for hearing, presented as a single document that applied to both matters, contested both the decision to deny him benefits and the resulting overpayment. His single questionnaire response, while ambiguous, stated specifically that he “was unaware that an administrative decision was made,” suggesting that he was unaware of the decision that resulted in the overpayment, and unaware of the overpayment itself, until he received a billing statement from the Department. Furthermore, as a practical matter, it does not make sense to construe claimant’s response as applying only to the overpayment matter. Claimants typically win no relief from overpayments merely by appealing the Department’s overpayment decisions. That is because, like in this case, the overpayment decisions are typically based upon other administrative decisions finding claimants ineligible for or disqualified from receiving benefits. Since claimant’s questionnaire response was more likely than not intended as a request for relief from the overpayment assessed upon him, and relief is only attainable if

the eligibility decision as set forth in decision # 103147 is reversed, we reasonably infer that claimant intended the appellant questionnaire to apply to decision # 103147 as well as decision # 92049.

Claimants appearing unrepresented in unemployment insurance cases seeking relief from adverse agency action often lack the vocabulary to specifically request what they need to achieve the relief they desire. They also often fail to recognize that when presented with substantially similar documents containing only minor differences, they must handle those documents separately and respond multiple times, even if they are providing the same information in both responses. As such, the few procedural rules that provide guidance for determining the validity of parties' filings with OAH and EAB do not require parties to make specific requests, so long as the state employees reviewing the requests can, for example, "determine[] what issue or decision is being appealed," or the filing "otherwise expresses intent to appeal." *See e.g.* OAR 471-040-0005(1); OAR 471-041-0060(1). As such, and consistent with such rules, it is OAH's and EAB's customary practice to apply single filings, including questionnaire responses, to a party's multiple cases, particularly where, as here, the single filing is in response to multiple questionnaires issued on a single day. For unknown reasons, that did not occur in this case.

Because the questionnaire response and application for review form claimant filed in this matter were not added to the hearing record in this case, EAB's initial review of the record in this matter did not include review of those documents. *See* EAB Exhibit 1. As such, EAB's initial review in this matter was not consistent with statute (*see* ORS 657.275(2), which requires EAB to perform "de novo review on the record"), or principles of due process, and reconsideration is required. On reconsideration, it is apparent that claimant submitted a timely response to the appellant questionnaire in this matter, and that what claimant wrote on the response was sufficient to raise the question of whether he had good cause for filing the late request for hearing on decision # 103147. EAB Decision 2019-EAB-0267, which erroneously dismissed claimant's application for review in this case, is therefore vacated, and Order No. 18-UI-119840 is set aside. Claimant is entitled to a hearing on the late request for hearing issue. If he establishes good cause for the late request for hearing, he would then also be entitled to a hearing on the merits of decision # 103147.

DECISION: EAB Decision 2019-EAB-0267 is vacated and Order No. 18-UI-119840 is set aside. This matter remanded for further proceedings consistent with this order.

J. S. Cromwell, D. P. Hettle, S. Alba

DATE of Service: July 31, 2019

NOTE: Once remand proceedings in this case are complete, OAH must return this matter to EAB. Upon completion of all administrative proceedings in this case, EAB's final order on reconsideration will be filed with the Oregon Court of Appeals as required by ORS 183.482 and ORAP 4.35.



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 លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນໍາຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນໍາສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.