

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0328

*Orders No. 19-UI-126871, 19-UI-126873 and 19-UI-126870 Reversed
Late Requests for Hearing Allowed*

Orders No. 19-UI-126869 and 19-UI-126868 Reversed & Remanded

PROCEDURAL HISTORY: On December 24, 2018, the Oregon Employment Department (the Department) served, by mail, notice of two administrative decisions concluding that claimant did not actively seek work from November 25 through December 1, 2018 (decision # 95332), and from December 9 through 15, 2018 (decision # 95635). On January 4, 2019, the Department served, by mail, notice of an administrative decision concluding that claimant did not actively seek work from December 16 through 22, 2018 (decision # 84927). On January 14, 2019, decisions # 95332 and 95635 became final without claimant having filed a request for hearing. On January 24, 2019, decision # 84927 became final without claimant having filed a request for hearing.

On February 15, 2019, the Department served, by mail, notice of an administrative decision based on decision # 95332 concluding that claimant was overpaid \$215 in benefits for the week ending December 1, 2018 (decision # 135219). On February 19, 2019, the Department served, by mail, notice of an administrative decision based on decision # 95635 concluding that claimant was overpaid \$215 in benefits for the week ending December 15, 2018 (decision # 80608). On February 21, 2019, claimant filed late requests for hearing on decisions # 95332, 95635 and 84927, and a timely request for hearing on decision # 135219. On February 25, 2019, claimant filed a timely request for hearing on decision # 80608.

On March 15, 2019, ALJ Wyatt conducted hearings, and on March 22, 2019 issued Orders No. 19-UI-126871, 19-UI-126873 and 19-UI-126870 dismissing claimant's late requests for hearing on decisions # 95332, 95635 and 84927, and Orders No. 19-UI-126869 and 19-UI-126868 affirming decisions # 135219 and 80608. On March 30, 2019, claimant filed timely applications for review of the Orders with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of the Orders and, for case-tracking purposes, this decision is being issued in quintuplicate (EAB Decisions 2019-EAB-0330, 2019-EAB-0329, 2019-EAB-0328, 2019-EAB-0326 and 2019-EAB-0325).

FINDING OF FACT: The Department mailed decisions # 95332, 95635 and 84927 to claimant's address of record, which was her home address. However, claimant did not receive the decisions in the mail. Claimant did not become aware of the decisions until February 20, 2019, after receiving decision # 135219 in the mail. Claimant filed her requests for hearing on decisions # 95332, 95635 and 84927 the following day.

CONCLUSIONS AND REASONS: Orders No. 19-UI-126871, 19-UI-126873 and 19-UI-126870 are reversed, and claimant's late requests for hearing on decisions # 95332, 95635 and 84927 allowed. And because Orders No. 19-UI-126869 and 19-UI-126868 were based on decisions # 95332 and 95635, those Orders are reversed and remanded.

Late Requests for Hearing. 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.

Orders No. 19-UI-126871, 19-UI-126873 and 19-UI-126870 concluded that claimant failed to establish good cause for filing late requests for hearing on decisions # 95332, 95635 and 84927 because claimant's assertion that she did not receive the decisions in the mail was insufficient to overcome the legal presumption that she did. *See* OAR 137-003-0520(9). At hearing, however, claimant testified that her mail was delivered to a locked mailbox that she checked approximately every two days, and that she was at home during the time that the decisions would have been received. Audio Record at 28:30-32:00. Claimant asserted that if she had received the decisions, she would have filed timely requests for hearings,¹ which is supported by the fact that she filed timely requests for hearing on decisions # 135219 and 80608, and timely applications for review of Orders No. 19-UI-126871, 19-UI-126873, 19-UI-126870, 19-UI-126869 and 19-UI-126868. Claimant also testified that she had a lot of trouble with her mail, asserting that she often received other people's mail and, due in part to a change in her address' zip code, failed to receive approximately half of her own mail. Audio Record at 32:00-33:00.

Absent evidence to the contrary, or a basis for concluding that claimant was not a credible witness, her testimony supporting her assertion that she did not receive decisions # 95332, 95635 and 84927 in the mail is sufficient to overcome the legal presumption that she did. Claimant's failure to receive the decisions was beyond her reasonable control and prevented her from filing timely requests for hearing. Claimant therefore established good cause for failing to do so. And because claimant filed her late requests for hearing one day after she first became aware of the decisions, she did so within a reasonable time. Claimant's late requests for hearing on decisions # 95332, 95635 and 84927 therefore are allowed.

Overpayments. 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

¹ Audio Record at 28:30-32:00.

individual's knowledge or intent. *Id.* ORS 657.315(1) provides, in relevant part, that an individual who has been overpaid benefits because of an error not caused by the individual's false statement, misrepresentation of a material fact or failure to disclose a material fact, or because an initial decision to pay benefits is subsequently reversed by a decision finding the individual is not eligible for the benefits, is liable to have the amount deducted from any future benefits otherwise payable to the individual under ORS chapter 657 for any week or weeks within 52 weeks following the week in which the decision establishing the erroneous payment became final.

Orders No. 19-UI-126869 and 19-UI-126868 concluded that claimant was overpaid benefits for the weeks ending December 1 and December 15, 2018 as a matter of law because decisions # 95332 and 95635 concluded that claimant was not actively seeking work during those weeks, became final without claimant having filed a request for hearing, and remained legally binding. Because claimant's late requests for hearing on decisions # 95332 and 95635 are allowed, however, claimant is entitled to a hearing on whether she was actively seeking work during the weeks ending December 1 and December 15, 2018. Orders No. 19-UI-126869 and 19-UI-126868 therefore are reversed and the matters remanded to the Office of Administrative Hearings.

DECISION: Orders No. 19-UI-126871, 19-UI-126873 and 19-UI-126870 are set aside, as outlined above. Orders No. 19-UI-126869 and 19-UI-126868 are set aside, and the matters remanded for further proceedings consistent with this order.

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

DATE of Service: April 11, 2019

NOTE: The failure of any party to appear at the hearing(s) on remand will not reinstate the Orders or return the matters to EAB. Only a timely application for review of the subsequent Orders will cause the matters to return to EAB.

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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 លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄຳຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄຳຮ້ອງຂໍການທົບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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 الاستئناف 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.

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