

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0656

Reversed & Remanded

PROCEDURAL HISTORY: On June 27, 2017, the Oregon Employment Department (the Department) served, by mail, notice of an administrative decision concluding that claimant willfully underreported earnings to obtain benefits and therefore was overpaid \$2,228 in benefits that she must repay, was disqualified from benefits for 16 penalty weeks, and assessed a \$688.40 monetary penalty (decision # 200036). On July 17, 2017, decision # 200036 became final without claimant having filed a request for hearing. Claimant filed a late request for hearing on June 20 or 21, 2019. On June 25, 2019, ALJ Kangas issued Order No. 19-UI-132215, dismissing claimant's request for hearing as late without a showing of good cause, subject to claimant's right to renew her request by filing a response to an appellant questionnaire within 14 days. On July 15, 2019, claimant filed a late response to the appellant questionnaire, and a timely application for review of Order No. 19-UI-132215 with the Employment Appeals Board (EAB). On July 16, 2019, ALJ Kangas issued a letter stating that because claimant's response to the appellant questionnaire was filed late, it would not be considered, another order would not be issued, and Order No. 19-UI-132215 remained in effect.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019), including claimant's response to the appellant questionnaire, and Department records that are relevant to whether claimant's late request for hearing on decision # 200036 should be allowed. Claimant's response to the appellant questionnaire has been marked as EAB Exhibit 1, and the Department records have been marked as EAB Exhibit 2. Copies of EAB Exhibits 1 and 2 have been provided to the parties with this decision. Any party that objects to the admission of EAB Exhibit 1 and/or 2 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) When the Department mailed decision # 200036 to claimant on June 27, 2017, claimant had not claimed benefits since August 24, 2016,¹ and had not been contacted by the

¹ EAB Exhibit 2 at 1.

Department since November 2016. EAB Exhibit 1. On December 10, 2016, claimant changed apartments within her building and updated her address with the United States Postal Service (USPS), but not with the Department. EAB Exhibit 1, EAB Exhibit 2 at 1. Because claimant had not updated her address with the Department, she did not receive decision # 200036, which the USPS returned to the Department as undeliverable. EAB Exhibit 1, EAB Exhibit 2 at 1.

(2) In May 2019, claimant filed an initial claim for benefits, followed by a weekly claim for benefits that was denied. EAB Exhibit 1. On May 22, 2019, claimant contacted the Department, asked why she had been denied benefits, and was told that she had penalty weeks and an overpayment that she had to repay. EAB Exhibit 1, EAB Exhibit 2 at 2.

(3) The Department subsequently re-mailed decision # 200036 to claimant, and claimant received the decision on June 13, 2019. EAB Exhibit 1. Claimant requested a hearing on June 20 or 21, 2019, seven or eight days after receiving decision # 200036 in the mail. Exhibit 2.

CONCLUSIONS AND REASONS: Order No. 19-UI-132215 is reversed and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 200036 should be allowed and, if so, the merits of that decision.

A request for hearing may be filed on forms provided by the Department or similar offices in other states. OAR 471-040-0005(1) (July 15, 2018). Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed. *Id.* A request for hearing may be filed by mail, fax, e-mail, or other means as designated by Department with the appealable document; or in person at any publicly accessible Employment Department office in Oregon. OAR 471-040-0005(2).

When delivered in person to any Department office in the state of Oregon, the date of delivery, as evidenced by the receipt date stamped or written by the agency employee who receives the document, shall be the date of filing. OAR 471-040-0005(4). When filed by mail, the date of filing shall be the postmarked date affixed by the USPS or, in the absence of a postmarked date, the most probable date of mailing. *Id.* When filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, or improbable, in which case the fax receipt date stamped or written by the agency employee, if available, shall be the date of filing.² *Id.* When filed by e-mail, the date of filing shall be the date of delivery, as evidenced by the receipt date on the Department's e-mail system, according to Pacific Time.

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 the decision 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, which does not include the failure to receive a document due to not notifying the Department 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 defines "a reasonable time" as seven days after the circumstances that prevented a timely filing ceased to exist.

² If a filing date cannot otherwise be determined, the most probable date of faxing shall be the date of filing. *Id.*

In the present case, claimant's response to the appellant questionnaire suggests that she might have had good cause for filing a late request for hearing due to factors beyond her reasonable control and/or an excusable mistake. In her response, claimant asserted that she filed her request for hearing almost two years late because she did not receive decision # 200036 until June 13, 2019. Although the Department initially mailed the decision to claimant on June 27, 2017, it was returned as undeliverable because claimant had changed apartments four months after she stopped claiming benefits, and updated her address with the USPS, but not with the Department. However, further inquiry is needed into the content of claimant's conversation with a Department employee in November 2016 to determine if claimant's failure to provide the Department with her updated address was an excusable mistake.

Further inquiry also is needed into the facts necessary for a determination of whether claimant filed her late request for hearing within a reasonable time after the circumstances that prevented a timely filing ceased to exist. Department records available to EAB indicate that on July 25, 2017, after decision # 200036 was returned as undeliverable, a Department employee called claimant and left a voice message asking her to contact the Department and provide an updated mailing address so that the decision could be re-mailed to claimant. EAB Exhibit 2 at 1. However, further inquiry is needed into whether the employee actually called claimant and at what number, whether claimant received the call and/or voice message, whether she returned the call, whether the Department re-mailed decision # 200036 to claimant at or around that time, and whether claimant received it.

Claimant's response to the appellant questionnaire and Department records available to EAB indicate that claimant spoke with several Department employees on May 22, 2019 and was informed that she was being denied benefits because of penalty weeks and an overpayment that she had to repay. EAB Exhibit 1, EAB Exhibit 2 at 2. Department records available to EAB also indicate that, on May 23, 2019, a Department employee advised claimant she was not receiving benefits due to 16 penalty weeks being assessed that claimant needed to serve in order to receive her benefits again, and that claimant had an overpayment assessed as well. EAB Exhibit 2 at 3. According to those records, the Department employee further advised claimant that she could request a review by submitting a late hearing request, that a copy of the administrative decision was sent out, and that after claimant reviewed the decision, if she still wanted to file a request for hearing, instructions were attached. EAB Exhibit 1 at 3. However, further inquiry into the content of these conversations is needed to determine whether claimant was made aware that she could file a request for hearing on decision # 200036 before receiving it and given instructions on how to do so, such that the circumstances that prevented a timely filing ceased to exist before she received the decision on June 13, 2019. Further inquiry also is needed into when the Department re-mailed decision # 200036, the reason(s) for any delay in claimant receiving the decision, and for any delay in her requesting a hearing after receiving it.

Finally, further inquiry is needed to determine whether claimant initially filed her late request for hearing on June 20 or 21, 2019. The request for hearing in the record is an email from claimant indicating that she sent it to the Department on June 21, 2019. Exhibit 2. However, the subject line of the email states, "Request/6.20.2019," and the Hearings Referral form completed by a Department employee states that the appeal date was "6/20/10." Exhibit 2. In addition, claimant states in the email that, "I am using the avenues set on your site to have my situation reviewed, yet I am not sure this is where I am supposed to be." Exhibit 2. That suggests that claimant may have used other "avenues" to file a request a hearing on June 20, 2019, and that she sent the June 21, 2019 email as a follow-up. However, further inquiry is needed to make that determination.

Order No. 19-UI-132215 therefore is reversed and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 200036 should be allowed and, if so, the merits of that decision.

DECISION: Order No. 19-UI-132215 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: August 6, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-132215 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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 desisyong ito.

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.