

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0675

Order No. 19-UI-132762 Reversed – Merits Hearing Required
Order No. 19-UI-132760 – Reversed & Remanded

PROCEDURAL HISTORY: On February 28, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from January 6, 2019 through February 9, 2019 (decision # 110616). On March 20, 2019, decision # 110616 became final without claimant having filed a timely request for hearing. On May 31, 2019, the Department served notice of another administrative decision assessing a \$1,715 overpayment that claimant was required to repay (decision # 84908). On June 14, 2019, claimant filed a late request for hearing on decision # 110616 and a timely request for hearing on decision # 84908.

On July 3, 2019, ALJ Meerdink conducted a consolidated hearing and issued Order No. 19-UI-132762, dismissing claimant's late request for hearing decision # 110616, and Order No. 19-UI-132760 affirming decision # 84908. On July 19, 2019, claimant filed timely applications for review of both orders with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-132760 and 19-UI-132762. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0674 and 2019-EAB-0675).

FINDINGS OF FACT: (1) On November 19, 2018, claimant filed an initial claim for unemployment insurance benefits. She filed weekly claims for benefits for weeks including January 6, 2019 through February 9, 2019 (weeks 2-19 through 6-19) and received \$1,715 in benefits.

(2) The Department subsequently concluded that benefits should not have been paid to claimant, and issued decision # 110616 retroactively denying her benefits for weeks 2-19 through 6-19.

(3) Although decision # 110616 was not returned to the Department as undeliverable, claimant did not receive it. Claimant was not aware of having any problems receiving mail intended for her. However, her mail box was on the side of her house, she did not live in the best neighborhood, and she received mail intended for others in her residence and from down the street "all the time." Transcript at 10.

(4) On May 31, 2019, the Department mailed decision # 84908 to claimant. Claimant received that decision, and called the Department to request a hearing on that and decision # 110616 the day after she received the decision.

CONCLUSIONS AND REASONS: Claimant's late request for hearing is allowed, and claimant is entitled to a hearing on the merits of decision # 110616. Because Order No. 19-UI-132760 is based entirely upon the finality of decision # 110616, and that decision is not final, Order No. 19-UI-132760 is set aside, and that matter remanded pending the outcome of the hearing on decision # 110616.

Late request 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 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, and defines "reasonable time" as seven days after those factors ceased to exist.

Order No. 19-UI-132762 concluded that claimant did not show good cause for filing the late request for hearing on decision # 110616 because although claimant claimed she did not receive the decision, documents sent through the mail are presumed received absent evidence to the contrary, and claimant only established "that there could have been problems," and not that she actually had any mail problems. Order No. 19-UI-132762 at 2. The record does not support that conclusion.

Claimant's unrefuted testimony was that she received mail for others at her address and from down the street "all the time." If claimant's postal carrier misdirected others' mail to claimant "all the time," it is reasonable to infer that the postal carrier likely also misdirected or was reasonably likely to misdirect claimant's mail. In addition to the known mail delivery problems, claimant also testified that she did not have a secure place for mail to be delivered, and did not live in the best neighborhood, circumstances which are reasonably likely to result in mail being removed from her mailbox without her authorization. It is more likely than not, weighing the totality of the evidence, that claimant had mail receipt problems, and did not receive notice of decision # 110616, thus overcoming any presumption to the contrary. Claimant's failure to receive decision # 110616 despite its being mailed to her at her address of record was a factor beyond her reasonable control that prevented her from filing a timely request for hearing. Claimant therefore established good cause.

The circumstances that prevented a timely filing in this case ceased to exist when claimant received decision # 84908 in the mail. Claimant provided unrefuted testimony that she contacted the Department and filed her late request for hearing the day after she learned of decision # 110616. She therefore filed her late request for hearing on decision # 84908 within the seven-day "reasonable time." Because claimant established good cause and filed within a reasonable time, her late request for hearing must be allowed, and she is entitled to a hearing on the merits of decision # 110616.

Overpayment. The determination in Order No. 19-UI-132760 that claimant was overpaid benefits was based entirely on the determination in Order No. 19-UI-132762 dismissing claimant's request for hearing on decision # 110616, and finding that decision final as a matter of law. Because we have concluded that claimant is entitled to a hearing on decision # 110616 and, depending on the outcome of

that hearing, may or may not have been overpaid, we also conclude that there is an insufficient basis upon which to conclude that claimant was overpaid benefits. Order No. 19-UI-132760 must therefore be reversed, and that matter remanded pending a determination of claimant's eligibility for benefits.

We note that the failure of any party to appear at any subsequent hearings scheduled in these matters will not reinstate Hearing Decisions 19-UI-132762 or 19-UI-132760 or return these matters to EAB. Only timely applications for review of any subsequent hearing decisions will cause these matters to return to EAB.

DECISION: Order No. 19-UI-132762 is set aside, as outlined above, and a merits hearing is required. Order No. 19-UI-132760 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: August 9, 2019

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 Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

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.

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.