

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0944

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On August 2, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide information requested by the Department, and therefore was denied benefits beginning July 14, 2019 and until the reason for his denial ended (decision # 91627). On August 7, 2019, the Department served notice of another administrative decision concluding that claimant failed to provide earnings information requested by the Department for the week of July 14 through 20, 2019, and therefore was denied benefits for that week and until he provided the information (August 7th decision). On August 22, 2019, decision # 91627 became final without claimant having filed a request for hearing on that decision. On August 27, 2019, the August 7th decision became final without claimant having filed a request for hearing on that decision.

On September 10, 2019, claimant filed a late request for hearing on both decisions. On September 16, 2019, ALJ Kangas issued Orders No. 19-UI-136579 and 19-UI-136580, dismissing claimant's request for hearing on both decisions, subject to his right to renew his request by responding to an appellant questionnaire by September 30, 2019. On October 1, 2019 claimant filed a late response to the appellant questionnaire, and a timely application for review of Orders No. 19-UI-136579 and 19-UI-136580 with the Employment Appeals Board (EAB). On October 1 and 2, 2019, ALJ Kangas issued letters stating that because claimant's response to the appellant questionnaire was late, it would not be considered, and Orders No. 19-UI-136579 and 19-UI-136580 remained in effect. This decision is being issued based on claimant's timely application for review of Orders No. 19-UI-136579 and 19-UI-136580 with EAB.

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-136579 and 19-UI-136580. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0943 and 2019-EAB-0944).

EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's response to the appellant questionnaire, and 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.

Claimant also submitted written argument on October 8, 2019. However, claimant's argument contained information that was not included in his request for hearing or his response to the appellant questionnaire, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information at those times. EAB therefore did not consider claimant's new information when reaching this decision. *See* ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019). However, claimant may offer the information into evidence at the hearing on remand.

CONCLUSIONS AND REASONS: Orders No. 19-UI-136579 and 19-UI-136580 are reversed, and these matters remanded for a hearing on whether claimant's late request for hearing on decision # 91627 and the August 7th decision should be allowed and, if so, the merits of those decisions.

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. Good cause does not include not understanding the implications of a decision or notice when it is received, or failure to receive a document due to not notifying the Department or Office of Administrative Hearings (OAH) of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal. *Id.* "A reasonable time" is seven days after the circumstances that prevented a timely filing ceased to exist. *Id.*

In his response to the appellant questionnaire, claimant indicated that his request for hearing was late because he did not receive decision # 91627 and the August 7th decision until August 27th, and that he filed his request for hearing by telephone on August 28, 2019. EAB Exhibit 1 at 1-2. Claimant further explained that:

The reason I didn't get the original appeal filed quickly . . . was due to the fact I have been having a difficult situation domestically. Not only did I lose my job but I'm also going through a separation and my former partner had been not providing me the mail from the Unemployment Dept. Multiple letters from the Unemployment Dept were provided to me on the day after the end of the appeal process. I believe the end date was the 26th of august, and I was given all these packages on the 27th. Unfortunately I believe was intentional by my former partner as to cause me problems with my unemployment claim. As you'll see in my contact records to the unemployment department, I quickly reached out the state when I got the paperwork (August 27) in order to resolve the situation.

The week of August 26th when I cleared these issues up with the Dept, I assumed I would receive all the benefits from previous weeks. So the delay to file an appeal happened due to the fact I didn't realize I wasn't receiving benefits the previous weeks. This was explained to me in a phone call with the Unemployment Department in the first week of

September. I'm sure there is a record of this call. Immediately when I realized this, I reached out to the Office of Administrative Hearings to set up the appeal.

EAB Exhibit 1 at 3-4. Claimant's response to the appellant questionnaire suggests that claimant may have filed his request for hearing late due to factors beyond his reasonable control or an excusable mistake, and that he filed a request for hearing within seven days after the circumstances that prevented a timely filing ceased to exist. Claimant therefore may have had good cause for filing his request for hearing late, and may have filed it within a reasonable time. However, further inquiry is needed to make that determination, including into whether claimant did not receive decision # 91627 and the August 7th decision until August 27th because he failed to notify the Department of an updated address while he was claiming benefits, whether claimant requested a hearing on August 28th, and, if not, whether he failed to file a request for hearing until September 10th because he did not understand the implications of decision # 91627 and the August 7th decision after receiving them.

Orders No. 19-UI-136579 and 19-UI-136580 therefore are reversed, and these matters remanded for a hearing on whether claimant's late request for hearing on decision # 91627 and the July 7th decision should be allowed and, if so, the merits of those decisions.

DECISION: Orders No. 19-UI-136579 and 19-UI-136580 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: October 15, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 19-UI-136579 and 19-UI-136580 or return these matters to EAB. Only a timely application for review of the subsequent orders will cause these 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 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 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.

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