

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0182

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On June 7, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 100437). On June 27, 2018,¹ decision # 100437 became final without claimant having filed a request for hearing on that decision. On July 5, 2018, the Department served notice of another administrative decision, based in part on decision # 100437, assessing a \$10,180 overpayment, \$1,527 monetary penalty, and 52 penalty weeks (decision # 193441). On July 25, 2018, decision # 193441 became final without claimant having filed a request for hearing on that decision.

On January 6, 2020, claimant filed a late request for hearing on both decisions. On January 28, 2020, ALJ Kangas issued Orders No. 20-UI-143430 and 20-UI-143431, dismissing claimant's request for hearing on both decisions, subject to his right to renew his request by responding to an appellant questionnaire by February 11, 2020. On February 11, 2020, Orders No. 20-UI-143430 and 20-UI-143431 became final without claimant having filed a response to the appellant questionnaire. On February 18, 2020, claimant filed a late response to the appellant questionnaire, and a timely application for review of Orders No. 20-UI-143430 and 20-UI-143431 with the Employment Appeals Board (EAB). On February 26, 2020, ALJ Kangas issued a letter stating that because claimant's response to the appellant questionnaire was late, it would not be considered, and Order No. 20-UI-143430 remained in effect. OAH did not issue a letter regarding Order No. 20-UI-143431. However, EAB presumes Order No. 20-UI-143431 also remained in effect. This decision is being issued based on claimant's timely application for review of Orders No. 20-UI-143430 and 20-UI-143431 with EAB.

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

¹ Decision # 100437 was originally mailed June 5, 2018. The Department mailed decision # 100437 again on June 7, 2018 to correct spelling and clerical errors on the original decision. The June 7 decision stated that the date to file a timely request for hearing was June 25, 2018, and that the date did not change from the original decision. However, because 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, the correct date to file a timely request for hearing on decision # 100437 was June 27, 2018.

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 will remain in the record.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-143430 and 20-UI-143431. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0182 and 2020-EAB-0183).

CONCLUSIONS AND REASONS: Orders No. 20-UI-143430 and 20-UI-143431 are reversed, and these matters remanded for a hearing on whether claimant's late request for hearing on decisions # 100437 and # 193441 should be allowed and, if so, the merits of those respective 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, and defines "reasonable time" as seven days after those factors ceased to exist. A letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(1)(q).

In his response to the appellant questionnaire, claimant indicated that his request for hearing was late because he did not receive decisions # 100437 and # 193441, and that he filed his request for hearing by telephone on January 6, 2020. EAB Exhibit 1. Claimant further explained that he discovered he was denied benefits only after he applied for benefits and did not begin receiving them after his waiting week. EAB Exhibit 1.

Despite the presumption that a letter duly addressed and mailed was received by the addressee, 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 had experienced problems in receiving his mail in June and July 2018 and whether he had reason to expect a decision from the Department regarding a work separation with Coburn Electric Inc. Department records show that claimant contacted the Department on December 27, 2019 about "penalty weeks assessed," and then spoke to a Department representative in the overpayment department and stated he wanted to appeal the decision when the representative told claimant about the overpayment.² Inquiry is necessary into whether claimant communicated with the Department after his work separation from Coburn Electric Inc. and later, and if so, the details of that communication. Inquiry

² Department records state the following: "MISREP DEC FROM COBURG ELECTRIC REPORTING DS AND NOT LW; ADV INV REACHED OUT BUT NEVER GOT A RESP; CLMT WANTED TO APPEAL DEC; ADV LATE AT THIS POINT; ADV WILL MAIL DEC#S 100437 AND 193441 TO CLMT; ADV TO REVIEW DECISIONS AND IF STILL WANTING TO APPEAL TO FILE LATE APPEAL;ADV FILING APPEAL WILL NOT STOP PW'S FROM CONT". OAR 471-041-0090(1)(c) provides that EAB may take notice of information contained in Employment Department records, generally cognizable facts, and facts within EAB's specialized knowledge. The ALJ shall have an opportunity to inquire regarding this information at the hearing on remand, and the parties shall have an opportunity to respond.

is needed into whether claimant received calls or other letters from the Department, and his response to them, or lack thereof. Orders No. 20-UI-143430 and 20-UI-143431 therefore are reversed, and these matters remanded for a hearing on whether claimant's late request for hearing on decisions # 100437 and # 193441 should be allowed and, if so, the merits of those respective decisions.

DECISION: Orders No. 20-UI-143430 and 20-UI-143431 are 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: March 11, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 20-UI-143430 and 20-UI-143431 or return these matters to EAB. Only a timely application for review of the subsequent orders will cause this matter 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 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 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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