

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0205

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On November 7, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able or available for work and was ineligible for benefits for the weeks from September 15, 2019 through October 26, 2019, and until the reason for the denial had ended (decision # 70807). On November 27, 2019, decision # 70807 became final without claimant having filed a request for hearing. On December 18, 2019, the Department served notice of an administrative decision assessing a \$3,744 overpayment that claimant was required to repay to the Department (decision # 133247). On January 7, 2020, decision # 133247 became final without claimant having filed a request for hearing.

On February 5, 2020, claimant filed late requests for hearings on decisions # 70807 and # 133247. On February 10, 2020, ALJ Kangas issued Order No. 20-UI-144231, dismissing claimant's request for hearing on decision # 70807 as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 24, 2020. On February 10, 2020, ALJ Kangas also issued Order No. 20-UI-144226, dismissing claimant's request for hearing on decision # 133247 as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 24, 2020.

On February 26, 2020, claimant filed a late response to the appellant questionnaire concerning decision # 70807 and a timely application for review of Order No. 20-UI-144231 with the Employment Appeals Board (EAB). On February 26, 2020, claimant also filed a late response to the appellant questionnaire concerning decision # 133247 and a timely application for review of Order No. 20-UI-144226 with EAB.

On March 5, 2020, ALJ Kangas issued a letter to claimant stating that because claimant's response to the appellant questionnaire was late, it would not be considered, and Order No. 20-UI-144231 remained in effect. On March 5, 2020, ALJ Kangas also issued a letter to claimant stating that because claimant's response to the appellant questionnaire was late, it would not be considered, and Order No. 20-UI-144226 remained in effect. This decision is being issued based on claimant's timely application for review of Orders No. 20-UI-144231 and 20-UI-144226 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-144231 and 20-UI-144226. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0206 and 2020-EAB-0205, respectively).

EVIDENTIARY MATTER: 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, which has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to EAB 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.

FINDINGS OF FACT: (1) On November 7, 2019, the Department mailed decision # 70807 to claimant's mailing address in McMinnville, Oregon. DR Exhibit 1 (Order No. 20-UI-144231). On December 18, 2019, the Department mailed decision # 133247 to claimant's mailing address in McMinnville, Oregon. DR Exhibit 1 (Order No. 20-UI-144226).

(2) On January 11, 2020, claimant went to a Department office to find out why he had not received benefits. While there, he was told that his claims had been processed, but the benefits had been "garnished by the overpayment [department]." EAB Exhibit 1. He was given copies of decisions # 70807 and 133247, and "filed or thought [he] filed" hearing requests that day while in the Department office. EAB Exhibit 1. On February 5, 2020, claimant filed telephone requests for hearing on decisions # 70807 and # 133247, which the Department processed.

CONCLUSIONS AND REASONS: Orders No. 20-UI-144231 and 20-UI-144226 are reversed, and these matters remanded for a hearing on whether claimant's late request for hearing on decision # 70807 and decision # 133247 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 requests for hearing were late because he did not receive decisions # 70807 and # 133247 in the mail and because he "thought" he filed requests for hearing on those decisions in person when he received copies of those decisions while in a Department office on January 11, 2020. EAB Exhibit 1 at 1-2. 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 on each of those decisions within seven days after the circumstances that prevented a timely filing ceased to exist on

January 11, 2020. Claimant therefore may have had good cause for filing his requests for hearing late, and may have filed them within a reasonable time. However, further inquiry is needed to make those determinations. The inquiry should include whether claimant did not receive notification of decisions # 70807 and # 133247 in the mail and, if not, why not. The inquiry should also include whether claimant requested hearings in person on January 11, 2020, and, if not, why he waited until February 5, 2020 to do so.

Orders No. 20-UI-144231 and 20-UI-144226 therefore are reversed, and these matters remanded for a hearing on whether claimant's late request for hearings on decisions # 70807 and # 133247 should be allowed and, if so, the merits of those decisions.

DECISION: Orders No. 20-UI-144231 and 20-UI-144226 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: March 17, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 20-UI-144231 and 20-UI-144226 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 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 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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