

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0309

Reversed & Remanded

PROCEDURAL HISTORY: On November 4, 2019, the Oregon Employment Department (the Department) mailed notice of an administrative decision concluding that claimant voluntarily left work without good cause and was disqualified from receiving unemployment insurance benefits effective January 13, 2019 (decision # 114328). On November 25, 2019, decision # 114328 became final without claimant having filed a timely request for hearing. On November 5, 2019, the Department mailed notice of another administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an \$11,700 overpayment, a \$1,755 monetary penalty, and 52 penalty weeks (decision # 200411). On November 25, 2019, decision # 200411 became final without claimant having filed a timely request for hearing.

On March 19, 2020, claimant filed a late request for hearing on each decision. On March 24, 2020, ALJ Kangas issued Orders No. 20-UI-146809 and 20-UI-146812, dismissing claimant's late requests for hearing on decisions # 114328 and # 200411, respectively, subject to claimant's right to renew his requests by responding to an appellant questionnaire by April 7, 2020. On April 5, 2020, claimant filed a timely response to the appellant questionnaires. ALJ Kangas considered claimant's identical questionnaire responses, and on April 10, 2020, issued Orders No. 20-UI-147850 and 20-UI-147845 re-dismissing claimant's late requests for hearing on decisions # 114328 and # 200411, respectively, as without good cause. On April 20, 2020, claimant filed timely applications for review of Orders No. 20-UI-147850 and 20-UI-147845 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 20-UI-147850 and 20-UI-147845. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0310 and 2020-EAB-0309, respectively).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching these decisions under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of Department records, the first dated November 13, 2019 noting a telephone conversation between a Department representative and claimant's wife, the second dated December 20, 2019 noting the return of decision # 114328 to the Department, and the third dated March 17, 2020 noting a telephone conversation between a Department representative and claimant. The records, a two-page document, have 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, EAB Exhibit 1 will remain in the record.

WRITTEN ARGUMENT: Claimant submitted written argument with his applications for review. 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. However, claimant may offer the information into evidence at the hearing on remand.

FINDINGS OF FACT: (1) During the month of November 2019, claimant was incarcerated and/or in treatment and was not residing at his residence address. EAB Exhibit 1; Exhibit 2. On November 4, 2019, the Department mailed claimant decision # 114328 concluding that claimant voluntarily left work without good cause and was disqualified from receiving benefits effective January 13, 2019. However, Department records show that decision # 114328 was returned to the Department. EAB Exhibit 1.

(2) On November 5, 2019, the Department mailed decision # 200411, based in part on decision # 114328, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits and assessing a \$11,700 overpayment, a \$1755 monetary penalty and 52 penalty weeks. Department records do not show that decision # 200411 was returned to the Department.

(3) On November 13, 2019, claimant's wife spoke with a Department representative and informed the representative that claimant was "INCARCERATED" and "UNABLE TO REQ A TIMELY HEARING" and "MAY NOT BE OUT OF JAIL IN TIME TO MAKE TIMELY APPEAL REQ." EAB Exhibit 1. The Department representative advised her as follows: "ADV WHEN CLMT IS OUT OF JAIL HE CAN CALL IN AND WE CAN DISCUSS WITH HIM ANY QUESTIONS OR CONCERNS HE MAY HAVE. ADV LATE APPEAL RIGHTS." EAB Exhibit 1.

(4) On March 17, 2020, claimant spoke with a Department representative and inquired about "why he had an OVP." EAB Exhibit 1. The representative responded and noted claimant's response as follows: "I EXPLAINED HIM THAT THE UNDERLINE [sic] VQ DEC ISSUED ON 11/4/19 AND FR DEC ISSUED 11/5/19; HE SAID DIDN'T RECEIVE IT AND WANTS TO APPEAL IT; GAVE HRGS EMAIL AND PHONE#." EAB Exhibit 1.

CONCLUSIONS AND REASONS: Orders No. 20-UI-147850 and 20-UI-147845 are reversed, and these matters remanded for a hearing on whether claimant's late requests for hearing on decisions # 114328 and # 200411 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, and defines "reasonable time" as seven days after those factors ceased to exist.

Department records show that decision # 114328, the work separation decision, was mailed to claimant on November 4, 2019, but was later returned to the Department. The record fails to show when, if ever, claimant received that decision by mail or when claimant first became aware of that decision.

Department records also show that when claimant spoke to a Department representative on March 17, 2020, he inquired about “why he had an OVP” and, when told about the “VQ DEC ISSUED ON 11/4/19 AND FR DEC ISSUED ON 11/5/19”, claimant responded that he “HE . . . DIDN'T RECEIVE IT AND WANTS TO APPEAL IT.” EAB Exhibit 1. In his response to the appellant questionnaire, claimant indicated that his request for hearing was late because when his wife contacted the Department and explained claimant’s incarceration and then “asked if this could hold until [he] was released . . . all she was told was to have [him] contact them once [he was] released.” Exhibit 3. Claimant also stated in his questionnaire response that according to the questionnaire, he had “20 day[s]” to file a request for a hearing and so he did not think his requests for hearing were late. Exhibit 3.

The Department’s records and claimant’s response to the appellant questionnaire suggest that he may have filed his requests 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 requests for hearing late, and may have filed the requests within a reasonable time. However, further inquiry is needed to make that determination, including whether claimant ever received decision # 114328 by mail, and if not, when he first became aware of that decision. The record also needs to be developed regarding when claimant was released from his incarceration and what, if any, Department records he received or reviewed upon his release. The record also needs to be developed regarding what claimant’s wife recalled from her conversation with the Department, including whether the Department told her that her husband had only seven days to file a request for hearing after becoming aware of either administrative decision. The record does not show if or when claimant’s wife provided the information she received from the Department to claimant, or if she provided the information accurately. Finally, if claimant’s requests for hearing are allowed, an inquiry into the merits of decisions # 114328 and # 200411 should be conducted.

Because further development of the record is necessary for a determination of these and any other issues the ALJ deems relevant, Orders No. 20-UI-147850 and 20-UI-147845 are reversed, and these matters are remanded.

DECISION: Orders No. 20-UI-147850 and 20-UI-147845 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: May 4, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 20-UI-147850 and 20-UI-147845 or return this matter to EAB. Only a timely application for review of the subsequent order 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 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 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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