

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0396

Reversed & Remanded

PROCEDURAL HISTORY: On October 4, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant left work without good cause and was disqualified from receiving benefits effective September 1, 2019 (decision # 124848). On October 24, 2019, decision # 124848 became final without claimant having filed a timely request for hearing. On March 30, 2020, claimant filed a late request for hearing. On April 7, 2020, ALJ Kangas issued Order No. 20-UI-147583, dismissing claimant's late request for hearing subject to claimant's right to renew the request by responding to an appellant questionnaire by April 21, 2020. On April 11, 2020, claimant responded to the appellant questionnaire. On April 14, 2020, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 20-UI-147583 was canceled, and a hearing would be scheduled to address claimant's late request for hearing and, if appropriate, the merits of decision # 124848. On April 23, 2020, OAH mailed notice of a hearing scheduled for May 7, 2020 at 8:15 a.m. On May 7, 2020, ALJ Schmidt conducted a hearing, and on May 8, 2020, issued Order No. 20-UI-149448, denying claimant's late request for hearing as untimely without good cause. On May 18, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB did not consider claimant's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) On or about July 15, 2019, claimant's doctor prescribed to claimant the prescription anti-anxiety drug, Venlafaxine, as a treatment for "night sweats" which were causing claimant trouble with her sleeping. Audio transcript at 13:30. Claimant took the prescription drug for the next 90 days and during this period claimant began having difficulties with her focus and concentration. Claimant also experienced anxiety, panic, headaches, dizziness, insomnia, heart palpitations, and blurry vision. Claimant never associated any of these conditions as being side effects of the Venlafaxine; rather, she thought she might be having an unrelated medical condition.

(2) On or about September 6, 2019, claimant separated from her regular employer.

(3) On or about October 6, 2019, claimant received the Department's October 4, 2019 adverse administrative decision (decision # 124848). Claimant read the administrative decision and disagreed with it "but [she] didn't think much of it." Audio record at 10:24. Claimant also read the accompanying information addressing how to appeal the administrative decision and understood that information. Nothing physically prevented claimant from filing a timely appeal.

(4) After 90 days, claimant no longer took the drug; however, the symptoms she had been experiencing the prior 90 days continued for another three to four months.

(5) At some point, claimant received treatment from a mental health provider. Claimant and her mental health provider were discussing claimant's work separation and the circumstances occurring around the time of her work departure. During that conversation, claimant and her mental health counselor determined that claimant was having a number of mental health-related negative reactions to the Venlafaxine she had been taking during this period and that her negative reactions to the drug likely led to her work separation. Although claimant was aware of the negative mental health-related reactions she was having at the time, claimant never attributed them to the prescription drug she was taking, and she would not have known that the prescription drug was the cause of these reactions, but for her conversations with the mental health provider

CONCLUSIONS AND REASONS: This matter is remanded for a hearing on whether claimant had good cause for the 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.

The order under review found that claimant had not demonstrated good cause to grant a late request for hearing because claimant had timely received and understood both the administrative decision and her appeal rights, yet claimant "elected not to file a request for hearing" within 20 days, and "there was nothing that prevented claimant from filing an appeal within the 20-day deadline." Order No. 20-UI-149448 at 3. Further inquiry in this proceeding is necessary, as the order's conclusions are not supported by the record in its current form.

Claimant's hearing testimony suggests that she might have had good cause for filing a late request for hearing in this case; however, additional evidence is required before a determination can be made regarding whether claimant had good cause for the late request for hearing, and, if so, whether she filed her late request for hearing within a reasonable time. Claimant's testimony supports the conclusion that during the 20-day appeal window between October 4, 2019 and October 24, 2019, claimant was experiencing multiple, prescription drug-related symptoms that may have been adversely affecting her mental health. Furthermore, there is evidence in the record suggesting that claimant's mental-health related symptoms might have unintentionally affected her ability to file a timely request for hearing, notwithstanding her physical ability to do so.

On remand, specific inquiry should be directed to the drug-related side effects claimant was experiencing during the relevant October 4-24, 2019 period, including inquiry into how those mental health-related side effects made claimant feel, interfered with her normal activities, and might have adversely affected claimant's ability to file a timely request for hearing, despite her physical ability to do so. In addition, specific inquiry should also address the timeframe within which claimant sought the assistance of a mental health provider, including the time period when the two of them reached the conclusion that the mental-health related side effects had led to claimant's work separation, and how long it was after this realization that claimant filed her late request for hearing.

This matter is therefore set aside because the record is incomplete, and remanded to OAH for a hearing on the late request for hearing issue. Only if claimant establishes at the hearing that she had good cause for her late request for hearing and that she filed the late request within a reasonable time will she be entitled to a hearing on the merits of decision # 124848.

DECISION: Order No. 20-UI-149448 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: May 22, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-149448 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 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.

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