

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0659

Reversed
Request to Reopen Granted
Late Requests for Hearing Allowed
Merits Hearing(s) Required

PROCEDURAL HISTORY: On June 18, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant refused an offer of suitable work without good cause and was disqualified from receiving unemployment insurance benefits effective May 3, 2020 (decision # 132136). On June 19, 2020, the Department served notice of an administrative decision, based in part on decision # 132136, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$3,808.00 overpayment of regular benefits, a \$3,000 overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits, a \$1,142.40 monetary penalty, and 28 penalty weeks. On July 8, 2020, decision # 132136 became final without claimant having filed a request for hearing. On July 9, 2020, the June 19, 2020 overpayment decision became final without claimant having filed a request for hearing.

On August 14, 2020, claimant filed late requests for hearing on both decision # 132136 and the June 19, 2020 overpayment decision. On August 31, 2020, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 9, 2020 at 1:30 p.m. to address both decision # 132136 and the June 19, 2020 overpayment decision. On September 9, 2020, claimant failed to appear at the hearing, and ALJ Lohuis issued Order No. 20-UI-153756 dismissing claimant's request for hearing on decision # 132136, and Order No. 20-UI-153758 dismissing claimant's request for hearing on the June 19, 2020 overpayment decision, leaving both decisions undisturbed.

On September 14, 2020, claimant filed a timely request to reopen the hearing. On September 21, 2020, OAH served notice of a hearing scheduled for October 5, 2020 at 9:30 a.m. to consider claimant's request to reopen and late requests for hearing, and, if granted, the merits of decision # 132136 and the June 19, 2020 overpayment decision. On October 5, 2020, ALJ Scott conducted a hearing and issued Order No. 20-UI-154828 dismissing claimant's late request for hearing on decision # 132136, and Order No. 20-UI-154831 dismissing claimant's late request for hearing on the June 19, 2020 overpayment decision, leaving both decisions undisturbed. On October 9, 2020, claimant filed an application for review of Orders No. 20-UI-154828 and 20-UI-154831 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-154828 and 20-UI-154831. For case-tracking purposes, this decision is being issued in duplicate (2020-EAB-0659 and 2020-EAB-0660).

EVIDENTIARY MATTERS: EAB has considered additional evidence necessary to complete the record when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's timely written argument, marked as EAB Exhibit 1; claimant's correspondence with the Department, OAH, and EAB, marked as EAB Exhibit 2; and other documents submitted by claimant, marked as EAB Exhibit 3. Copies of these exhibits have been provided to the parties with this decision. Any party that objects to EAB admitting EAB Exhibits 1, 2, or 3 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibits will remain in the record.

FINDINGS OF FACT: (1) In late June 2020, claimant received decision # 132136 and the June 19, 2020 overpayment decision. Decision # 132136 stated, "Any appeal from this decision must be filed on or before July 8, 2020 to be timely." Exhibit 1. The June 19, 2020 overpayment decision stated, "Any appeal of this decision must be filed on or before July 9, 2020 . . . to be timely." Exhibit 1.

(2) Claimant has limited proficiency in reading, writing, and speaking English. Claimant's adult daughter lives with claimant and has greater proficiency in English than claimant. Transcript at 10–11. Claimant's son lives in Australia and has greater proficiency in English than claimant. Transcript at 11–12.

(3) After claimant received decision # 132136 and the June 19, 2020 overpayment decision in June 2020, she made several attempts to obtain help in understanding the decisions. She requested help from her daughter, who refused to help claimant, and a friend, who was unable to help claimant. Transcript at 23-24. Claimant attempted to visit a WorkSource office, but it was closed. EAB Exhibit 2 at 14. Claimant also attempted to call the Department to obtain help, but was unable to understand the telephone system's voice prompts. EAB Exhibit 2 at 14.

(4) In July 2020, claimant asked a counsellor to help her understand decision # 132136 and the June 19, 2020 overpayment decision. Transcript at 25. The counsellor helped claimant send a letter to OAH on July 9, 2020. EAB Exhibit 2 at 14. In July and August 2020, the counsellor helped claimant contact the Department three times, and the Department advised claimant to file a request for hearing. EAB Exhibit 2 at 5. On August 14, 2020, claimant requested a hearing on decision # 132136 and the June 19, 2020 overpayment decision. Exhibit 2.

(5) On August 31, 2020, OAH mailed a Notice of Hearing to claimant, advising her that a hearing was scheduled for September 9, 2020 at 1:30 p.m. Exhibit 3. Claimant did not receive the Notice of Hearing and was otherwise unaware of the hearing scheduled for September 9, 2020, and therefore failed to appear. On September 10, 2020, claimant contacted her son because she did not understand the correspondence she had been receiving from the Department. EAB Exhibit 2 at 7. Before September 10, 2020, claimant did not realize that her son was proficient enough in English that he could help her understand the documents that had been sent to her. EAB Exhibit 2 at 7.

CONCLUSIONS AND REASONS: Claimant's request to reopen the hearing on decision # 132136 and the June 19, 2020 overpayment decision is granted. Claimant's late requests for hearing on decision # 132136 and the June 19, 2020 overpayment decision are allowed. Claimant is entitled to a hearing on the merits of both decisions, and to have EAB Exhibits 1 through 3 considered to the extent they are relevant to the merits.

The orders under review did not address claimant's request to reopen the September 9, 2020 hearing, concluding that it was unnecessary to do so because claimant had not established that her late requests for hearing on decision # 132136 and the June 19, 2020 overpayment decision should be allowed. Order No. 20-UI-154828 at 4; Order No. 20-UI-154831 at 4-5. However, the question of whether claimant's request to reopen the hearing should be allowed must be answered before claimant's late requests for hearing can be addressed. EAB has taken jurisdiction of claimant's request to reopen the September 9, 2020 hearing under ORS 657.275(2).

Request to Reopen. ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. "Good cause" exists when the requesting party's failure to appear at the hearing arose from an excusable mistake or from factors beyond the party's reasonable control. OAR 471-040-0040(2) (February 10, 2012). The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which OAH shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

Claimant explained in her request to reopen that she was working on September 9, 2020, the day of the hearing and "did not notice the letter about the hearing dates." Exhibit 4. However, claimant then clarified that she had "... checked all document[s] in [her] file but could not find the Hearing Notice [sic]." A letter duly directed and mailed is presumed to have been received in the regular course of the mail. ORS 40.135(1)(q). However, the fact that claimant saved correspondence she received from the Department and OAH in a file, and confirmed that the notice of hearing was not in the file, is sufficient to overcome that presumption, especially given claimant's good faith efforts to understand and respond to correspondence that she did receive from the Department and OAH. Claimant therefore established that she did not receive the notice of hearing, which was a factor beyond her reasonable control that prevented her from appearing. Claimant therefore had good cause for failing to appear at the hearing, and because she filed a timely request to reopen the hearing, her request is granted.

Late Requests 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 orders under review concluded that claimant did not establish good cause for filing late requests for hearing on decision # 132136 and the June 19, 2020 overpayment decision because, while "the evidence was persuasive that ... claimant has limited English proficiency" and that she "... did not understand

[the decisions] when she received [them],” she was “not able to provide any reasonable explanation as [to] why she was able to get help from her son . . . after September 9, 2020,” but not in time to file timely requests for hearing. Order No. 20-UI-154828 at 3–4; Order No. 20-UI-154831 at 4.

However, the record shows that claimant’s failure to file timely request for hearings was largely the result of her limited English proficiency, which was factor beyond her reasonable control. The record further shows that although claimant did not ask her son, who lived in Australia, for help, she made repeated attempts to obtain help from others in understanding the decisions. She requested help from her daughter, who refused to help claimant, and a friend, who was unable to help claimant. Transcript at 23-24. Claimant attempted to visit a WorkSource office, but it was closed. EAB Exhibit 2 at 14. Claimant also attempted to call the Department to obtain help, but was unable to understand the telephone system’s voice prompts. EAB Exhibit 2 at 14. Given claimant’s inability to file timely requests for hearing despite repeated attempts to obtain help from others, and that she did not realize until September 10, 2010 that her son could have helped her, her failure to contact her son for assistance was, at worst, an excusable mistake.

Claimant apparently found the help she needed to understand the decisions from the counsellor she worked with beginning sometime in July 2020. However, because claimant contacted the Department three times in July and August 2020, the record shows that she likely continued (with the help of the counsellor) contacting the Department until her inability to appeal the decisions resolved, on or about the day she filed her requests for hearing. Claimant therefore established good cause for filing her requests for hearing late, and that she filed her late requests for hearing within a reasonable time. Claimant’s late requests for hearing on decision # 132136 and the June 19, 2020 overpayment decision therefore are allowed.

In sum, claimant’s request to reopen the hearing on decision # 132136 and the June 19, 2020 overpayment decision is granted, and claimant’s late requests for hearing on decision # 132136 and the June 19, 2020 overpayment decision are allowed. Claimant is entitled to a hearing on the merits of both decisions, and to have EAB Exhibits 1 through 3 considered to the extent they are relevant to the merits.

DECISION: Orders No. 20-UI-154828 and 20-UI-154831 are set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: November 16, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 20-UI-154828 and 20-UI-154831 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

NOTE: Parties requiring language assistance to understand decisions or correspondence from the Department, OAH or EAB may contact the Department by phone at (503) 606-6969 or by e-mail at oed_languageaccess@oregon.gov.

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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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