

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0711

Reversed & Remanded

PROCEDURAL HISTORY: On September 1, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective March 22, 2020 (decision # 81804). Claimant filed a request for hearing. On October 20, 2020, ALJ Kangas issued Order No. 20-UI-155429, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 3, 2020.

On November 6, 2020, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 20-UI-155429 with the Employment Appeals Board (EAB). On November 10, 2020, ALJ Kangas mailed a letter stating that because claimant's response to the questionnaire was late, the Office of Administrative Hearings (OAH) would not consider it or issue another order, and Order No. 20-UI-155429 remained in effect. This matter is before EAB based upon claimant's timely application for review of Order No. 20-UI-155429.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's response to the appellant questionnaire and an administrative decision issued by the Department on September 4, 2020 assessing an overpayment, a monetary penalty, and penalty weeks, which 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, the exhibit will remain in the record.

FINDINGS OF FACT: (1) On September 1, 2020, the Department mailed decision # 81804 to claimant's address on file with the Department. Decision # 81804 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than September 21, 2020." Exhibit 1.

(2) On September 4, 2020, the Department mailed an administrative decision concluding that claimant willfully made misrepresentations and failed to report material facts to obtain unemployment insurance

benefits, and assessing a \$3,004 overpayment, a \$90.60 monetary penalty, and four penalty weeks. EAB Exhibit 1. The September 4, 2020 decision stated, “Any appeal from this decision must be filed on or before September 24, 2020 to be timely.” EAB Exhibit 1.

(3) On September 23, 2020, claimant mailed a letter to the Department requesting an appeal of “[her] case.” Exhibit 2. The letter did not identify which “case” claimant was appealing, but primarily addressed claimant’s separation from employment. Exhibit 2.

(4) Claimant indicated on her response to the appellant questionnaire that she received an administrative decision on September 8, 2020, and that she mailed her hearing request on September 23, 2020. EAB Exhibit 1. She included with her response a copy of the September 4, 2020 administrative decision, noting that decision’s statement that she had until September 24, 2020 to file her request for hearing, and asserting that she had not filed it late. EAB Exhibit 1.

CONCLUSIONS AND REASONS: Order No. 20-UI-155429 is set aside and this matter remanded for further development of the record.

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 correctly concluded that because claimant did not file her request for hearing on decision # 81804 until after September 21, 2020, claimant’s request for hearing was late. Order No. 20-UI-155429 at 1. However, the record does not contain sufficient information to determine whether claimant filed her request late due to factors beyond her reasonable control or due to an excusable mistake, or whether she filed her late request for hearing within seven days after those factors ceased to exist. More specifically, the record fails to show whether claimant was aware that the Department had issued two separate, appealable decisions to her, each with their own deadline to request a hearing. On remand, the ALJ should inquire as to whether claimant ever received decision # 81804 and, if so, when she received that decision. The ALJ should also inquire why, if claimant did receive decision # 81804, she did not file a hearing request on that decision by September 21, 2020. If claimant did not receive decision # 81804, the ALJ should conduct an inquiry into whether claimant otherwise became aware of the decision and, if so, when. If, after a thorough inquiry on this issue, the ALJ allows claimant’s late request for hearing, a hearing on the merits of decision # 81804 should be conducted.

The parties may offer new information into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

Because further development of the record is necessary for a determination of whether claimant's late request for hearing on decision #81804 should be allowed, Order No. 20-UI-155429 is reversed, and this matter is remanded.

DECISION: Order No. 20-UI-155429 is 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: December 4, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-155429 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 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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