

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0722

Late Applications for Review Allowed
Orders No. 20-UI-143538 and 20-UI-143528 – Reversed & Remanded

PROCEDURAL HISTORY: On July 26, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective May 12, 2019 (decision # 93602). On August 15, 2019, decision # 93602 became final without claimant having filed a timely request for hearing. On November 15, 2019, the Department served notice of another administrative decision concluding claimant received benefits to which she was not entitled and assessing a \$1,610 overpayment she was required to repay to the Department (decision # 115157). On December 5, 2019, decision # 115157 became final without claimant having filed a timely request for hearing.

On January 21, 2020, claimant filed late requests for hearing on decisions # 93602 and # 115157. On January 30, 2020, ALJ Kangas issued Order No. 20-UI-143538, dismissing claimant's late request for hearing on decision # 93602, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 13, 2020. On January 30, 2020, ALJ Kangas also issued Order No. 20-UI-143528, dismissing claimant's late request for hearing on decision # 115157, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 13, 2020. On February 19, 2020, Orders No. 20-UI-143538 and 20-UI-143528 became final without claimant having responded to the appellant questionnaires or filed timely applications for review.

On November 6, 2020, claimant filed late responses to the appellant questionnaires with the Office of Administrative Hearings (OAH). On November 9, 2020, ALJ Kangas mailed letters to claimant stating that because claimant's responses to the questionnaires were late, OAH would not consider them or issue any additional order, and that Orders No. 20-UI-143538 and 20-UI-143528 remained in effect. On November 17, 2020, claimant filed late applications for review of Orders No. 20-UI-143538 and 20-UI-143528 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-143538 and 20-UI-143528. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0722 and 2020-EAB-0721).

EVIDENTIARY MATTERS: EAB has considered additional evidence when reaching these decisions under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's response to the appellant questionnaire for each case before OAH and claimant's identical written argument for each case before EAB. Claimant's appellant questionnaire response to Order No. 20-UI-143538 has been marked as EAB Exhibit 1, claimant's appellant questionnaire response to Order No. 20-UI-143528 has been marked as EAB Exhibit 2 and claimant's identical written argument for each case before EAB has been marked as EAB Exhibit 3. Copies of EAB Exhibits 1, 2 and 3 have been provided to the parties with these decisions. Any party that objects to our admitting EAB Exhibits 1, 2 or 3 into the record of each case 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(s) will remain in the record of each case.

FINDINGS OF FACT: (1) On July 26, 2019, the Department mailed decision # 93602 to claimant's address on file with the Department. Decision # 93620 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 August 15, 2019." Exhibit 1 (Case No. 2020-UI-04731).

(2) On November 15, 2019, the Department mailed decision # 115117 to claimant's address on file with the Department. Decision # 93620 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 December 5, 2019." Exhibit 1 (Case No. 2020-UI-04727).

(3) On January 21, 2020, claimant filed requests for hearing on decisions # 93602 and # 115117 with OAH by email.

(4) On January 30, 2020, OAH mailed Order No. 20-UI-143538, dismissing claimant's request for hearing on decision # 93620 as late, to claimant's address on file with the Department. Order No. 20-UI-143538 stated, "You may appeal this decision by filing the attached Application for Review with the Employment Appeals Board within 20 days of the date this decision is mailed." Order No. 20-UI-143538 at 2. Order No. 20-UI-143538 also stated on its Certificate of Mailing, "Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than February 19, 2020."

(5) On January 30, 2020, OAH also mailed Order No. 20-UI-143528, dismissing claimant's request for hearing on decision # 115157 as late, to claimant's address on file with the Department. Order No. 20-UI-143528 stated, "You may appeal this decision by filing the attached Application for Review with the Employment Appeals Board within 20 days of the date this decision is mailed." Order No. 20-UI-143528 at 2. Order No. 20-UI-143528 also stated on its Certificate of Mailing, "Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than February 19, 2020."

(6) In claimant's questionnaire response regarding Order No. 20-UI-143528, received by OAH on November 6, 2020, claimant explained that she had been in "a domestic violence relationship" and was "dealing with a mental illness." EAB Exhibit 2 at 1. She also stated regarding her request for hearing, "I feel that I filed it on time by the dead line given. But my occurring mental illness that I am going through has caused me to forget things in my everyday life." EAB Exhibit 2 at 2.

(7) On November 17, 2020, claimant filed applications for review of Orders No. 20-UI-143538 and 20-UI-143528 with EAB by fax. On November 17, 2020, claimant described her personal history and physical and mental condition as follows: “I’ve had gone for years of being domestic victim. So I have mental illness. So I can’t understand why I would fit my physical and mental mind to have a written argument. It really makes it hard on me.” EAB Exhibit 3.

CONCLUSIONS AND REASONS: Claimant’s late applications for review are allowed. Orders No. 20-UI-143538 and 20-UI-143528 are reversed and these matters remanded for further development of the record.

Late Applications for Review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b).

The applications for review of Orders No. 20-UI-143538 and 20-UI-143528 were due February 19, 2020. Because claimant did not file the applications for review until November 17, 2020, the applications for review were late. Claimant asserted that she had been a domestic violence victim “for years” and suffered from “mental illness” as a result. She explained that because of that history and condition she did not have the ability to “fit my physical and mental mind to have a written argument. It really makes it hard on me.” Based on those statements, it may reasonably be inferred that due to circumstances beyond her reasonable control, claimant was unable to file her applications for review until November 17, 2020. Accordingly, claimant’s late applications for review are allowed.

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 record as a whole suggests that claimant may have filed her requests for hearing on decisions # 93620 and # 115157 late due to circumstances beyond her reasonable control, such as her history as a domestic violence victim and her mental illness. However, additional evidence is needed to determine whether or not claimant can establish that she had good cause for doing so, and if so, whether or not claimant filed the late requests for hearing within a reasonable time after those circumstances ceased to exist.

ORS 657.270 requires that all parties be given a reasonable opportunity for a fair hearing. That obligation necessarily requires an ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because

further development of the record is necessary for a determination of whether or not claimant's late requests for hearing on decisions # 93620 and # 155157 should be allowed, Orders No. 20-UI-143538 and 20-UI-143528 are reversed, and these matters remanded for further development of the record.

The primary issues on remand are whether or not claimant had good cause for her late requests for hearing and if so, whether she filed them within a reasonable time after those circumstances ceased to exist. Only if claimant's late requests for hearing are allowed would the ALJ have jurisdiction to decide, and should decide, whether or not claimant's work separation from the employer was disqualifying for purposes of unemployment insurance benefits and whether the resulting overpayment was properly assessed.

DECISION: Orders No. 20-UI-143538 and 20-UI-143528 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: December 9, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 20-UI-143538 and 20-UI-143528 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

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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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