

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0118

Orders No. 21-UI-160126 and 21-UI-160127 Reversed
Late Requests for Hearing Allowed
Merits Hearings Required

PROCEDURAL HISTORY: On November 12, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not able and available for work during the week of April 26, 2020 through May 2, 2020 and for that reason was ineligible for benefits for that week (decision # 154743). Also on November 12, 2020, the Department served notice of an administrative decision concluding claimant was not able and available for work during the week of June 7, 2020 through June 13, 2020 and for that reason was ineligible for benefits for that week (decision # 154725). On December 2, 2020, decisions # 154743 and # 154725 became final without claimant having filed a timely request for hearing.

On December 8, 2020, claimant filed late requests for hearing on decisions # 154743 and # 154725. On December 21, 2020, ALJ Kangas issued Order No. 20-UI-157939 dismissing claimant's late request for hearing on decision # 154743, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 4, 2021. On December 23, 2020, ALJ Kangas issued Order No. 20-UI-158105, dismissing claimant's late request for hearing on decision # 154725, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 6, 2021. On January 2, 2021, claimant filed timely responses to the appellant questionnaires.

On January 13, 2021, the Office of Administrative Hearings (OAH) mailed claimant letters stating that Orders No. 20-UI-157939 and 20-UI-158105 were cancelled and that a hearing would be scheduled to address whether claimant's late requests for hearing should be allowed and, if allowed, the merits of decisions # 154743 and # 154725. On January 14, 2021, OAH mailed notice to the parties of a consolidated hearing scheduled for January 27, 2021 at 10:45 a.m. On January 27, 2021, ALJ Frank conducted a consolidated hearing, at which the employer failed to appear, and on February 1, 2021 issued Orders No. 21-UI-160126 and 21-UI-160127, re-dismissing claimant's requests for hearing on decisions # 154743 and # 154725 as late without a showing of good cause, leaving decisions # 154743 and # 154725 undisturbed. On February 19, 2021, claimant filed timely applications for review of Orders No. 21-UI-160126 and 21-UI-160127 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-160126 and 21-UI-160127. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0118 and 2021-EAB-0117, respectively).

FINDINGS OF FACT: (1) On November 12, 2020, the Department mailed an administrative decision, decision # 154743, to claimant's address of record on file with the Department. Decision # 154743 stated, in relevant part, "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 2, 2020." Exhibit 1 at 2 (Order No. 21-UI-160126). Decision # 154743 also stated, in relevant part, "IMPORTANT: If you were paid benefits for any week covered by this decision, you may have to pay us back." Exhibit 1 at 2 (Order No. 21-UI-160126).

(2) On November 12, 2020, the Department mailed a second administrative decision, decision # 154725 to claimant's address of record on file with the Department. Decision # 154725 stated, in relevant part, "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 2, 2020." Exhibit 1 at 2 (Order No. 21-UI-160127). Decision # 154725 also stated, in relevant part, "IMPORTANT: If you were paid benefits for any week covered by this decision, you may have to pay us back." Exhibit 1 at 2 (Order No. 21-UI-160127).

(3) Claimant last claimed benefits on or about November 22, 2020.¹

(4) From early April 2020 until shortly after December 2, 2020, claimant did not regularly receive her mail. Claimant was "couch surfing" among acquaintances or staying at the residence of her husband's uncle, who did not allow claimant to use his residence address as claimant's mailing address. Audio Record at 17:45 to 20:00. For that reason, claimant used the residence address of an acquaintance who lived in White City, Oregon to receive her mail, including mail from the Department, even though claimant never resided there. Because there was fighting within the family members that resided there and some "vindictiveness" from those family members toward claimant, when she picked up her mail at the White City, Oregon address, she did not always receive all of her mail. Audio Record at 20:45 to 21:30.

(5) Shortly after December 2, 2020, claimant received mail, including decisions # 154743 and # 154725, from the White City, Oregon address. She disagreed with the decisions and decided to appeal them. On December 8, 2020, claimant contacted the Department and requested an appeal of both decisions. Exhibit 2 at 1 (Order No. 21-UI-160126); Exhibit 2 at 1 (Order No. 21-UI-160127).

CONCLUSIONS AND REASONS: Claimant's late requests for hearing on decisions # 154743 and # 154725 are allowed. Claimant is entitled to a hearing on 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

¹ EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

(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. OAR 471-040-0010(1)(b) provides that good cause “does not include” failure to receive a document due to not notifying the Department of an updated address while the person is claiming benefits or knows, or reasonably should know, of a pending appeal.

The deadline for claimant to file a timely request for hearing on decisions # 154743 and # 154725 was December 2, 2020. Because claimant’s requests for hearing on those decisions were not filed until December 8, 2020, the requests were late.

Orders No. 21-UI-160126 and 21-UI-160127 concluded that claimant failed to show good cause for her late requests for hearing and that her hearing request in each case was subject to dismissal, reasoning in each order:

At hearing and in writing, claimant has offered rather uncertain and inconsistent evidence regarding whether and when she may have received the administrative decision . . . Regardless, she has ascribed any delay in receiving it to an unreliable and vindictive individual living at the residence to which the correspondence was sent – a location where claimant did not reside when last she claimed benefits and, in fact, may never have resided at all.

Orders No. 21-UI-160126 at 3, and 21-UI-160127 at 3. The orders went on to cite the language of OAR 471-040-0010(1)(b) as justification for those conclusions further reasoning that because claimant failed to notify the Department of an updated mailing address in November 2020, when she last claimed benefits, claimant failed to establish good cause for her late requests for hearing on decisions # 154743 and # 154725. Orders No. 21-UI-160126 and 21-UI-160127 at 3. However, the record does not support those conclusions.

Although the record shows that claimant failed to establish exactly when she received decisions # 154743 and # 154725, she testified that she did not receive the mail that included decisions # 154743 and # 154725 from the White City, Oregon address until after December 2, 2020. Audio Record at 17:45 to 18:15. Claimant’s testimony on that issue is credible on its face and is supported by the statement on the hearing requests filed on December 8, 2020 which states that claimant reported she had received “overpayment letter[s] for weeks 18 & 24 due to an AAA issue.” Exhibit 2 at 2. Although decisions # 154743 and # 154725 were not overpayment decisions, they did state that if claimant had been paid benefits for any weeks covered by the decisions, which were weeks 18 and 24 of 2020, she might be required to pay the benefits back. More likely than not, claimant received those decisions shortly after December 2, 2020.

Claimant did not request a hearing on decisions # 154743 and # 154725 by the December 2, 2020 deadline likely due to circumstances beyond claimant’s reasonable control. Claimant was “couch surfing” and likely was experiencing homelessness during that time. Although claimant may have failed to notify the Department of an updated mailing address by or in November 2020, the record as a whole shows that it was likely that claimant did not have a better address to use at that time than the White City, Oregon address on file with the Department. Accordingly, more likely than not, claimant

established good cause for extending the filing deadline a “reasonable time” after she first received decisions # 154743 and # 154725 shortly after December 2, 2020.

The circumstances that prevented timely filings of hearing requests on those decisions ceased to exist shortly after December 2, 2020, when claimant likely received them. On December 8, 2020, which was less than seven days after the circumstances that prevented timely filings ceased to exist, claimant submitted late requests for hearing on decisions # 154743 and # 154725. Claimant therefore filed her requests for hearing within a reasonable time under OAR 471-040-0010.

Claimant’s late requests for hearing on decisions # 154743 and # 154725 are allowed. Claimant is entitled to a hearing on the merits of those decisions.

DECISION: Orders No. 21-UI-160126 and 21-UI-160127 are set aside, and these matters remanded for further proceedings consistent with this order.

S. Alba and D. P. Hettle.

DATE of Service: March 4, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 21-UI-160126 and 21-UI-160127 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

ទោរទៅ – តម្រូវការនេះមិនមែនជាភារកិច្ចរបស់រដ្ឋទេ បើសិនជាលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

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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