

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0133

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On February 11, 2014, 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 January 5, 2014 (decision # 81230). On March 3, 2014, decision # 81230 became final without claimant having filed a timely request for hearing. On December 10, 2020, the Department served notice of an administrative decision concluding that claimant was not able to work during each of the weeks including April 19, 2020 through December 5, 2020 and was denied benefits for those weeks and until the reason for the denial had ended (decision # 105416). On December 30, 2020, decision # 105416 became final without claimant having filed a timely request for hearing. On January 1, 2021, claimant filed late requests for hearing on decisions # 81230 and # 105416.

ALJ Kangas considered claimant's late requests for hearing, and on January 12, 2021 issued Orders No. 21-UI-159026 and 21-UI-159027, dismissing claimant's requests for hearing on decisions # 81230 and # 105416 as late, subject to claimant's right to renew the requests by responding to appellant questionnaires by January 26, 2021. On January 27, 2021, claimant filed late responses to the appellant questionnaires and timely applications for review of Orders No. 21-UI-159026 and 21-UI-159027 with the Employment Appeals Board (EAB). On February 17, 2021, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire responses or issue another order regarding either matter because the questionnaire responses were late. These matters come before EAB based upon claimant's January 27, 2021 applications for review of Orders No. 21-UI-159026 and 21-UI-159027.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-159026 and 21-UI-159027. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0133 and 2021-EAB-0132).

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 appellant questionnaire response to Order No. 21-UI-159026, marked as EAB Exhibit 1, and claimant's appellant questionnaire response to Order No. 21-UI-159027, marked as EAB Exhibit 2. Copies of EAB Exhibits 1 and 2 have been provided to the parties with these decisions. Any party that objects to our admitting EAB Exhibit 1 or 2 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 exhibits will remain in the record.

CONCLUSIONS AND REASONS: Orders No. 21-UI-159026 and 21-UI-159027 are set aside and these matters remanded for a hearing on whether claimant's late request for hearing on decisions # 81230 and # 105416 should be allowed and, if so, 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 (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.

On their appellant questionnaire response to Order No. 21-UI-159027, claimant indicated that they received decision # 105416 on December 31, 2020. EAB Exhibit 2 at 1. They further explained that they did not file their request for hearing prior to January 1, 2021 because they were a person experiencing homelessness and "[their] mail went to [their] father's home," and they were unable to go to their father's home because of their job and concerns about COVID-19. EAB Exhibit 2 at 2. That claimant did not have immediate access to their mail because they were experiencing homelessness, and were prevented from retrieving their mail timely due to logistical concerns, may have constituted factors beyond claimant's reasonable control. However, further inquiry is needed to determine when claimant first learned that mail from the Department was waiting for them at their father's house, what efforts, if any, they made to retrieve the mail or learn of its contents prior to December 31, 2020, and why they were specifically unable to retrieve it prior to that date.

Claimant's response to the appellant questionnaire for Order No. 21-UI-159026 was similar to their response for Order No. 21-UI-159027, although they did not state on what date they first received or otherwise learned of decision # 81230. Instead, they stated that they were uncertain of when they received it, as it was dated seven years prior to the appellant questionnaire. EAB Exhibit 1 at 1. However, they did state that they "did not receive any mail until 12/31/2020" due to experiencing homelessness. EAB Exhibit 1 at 1. From claimant's response here, it is unclear whether claimant has been experiencing homelessness continuously since 2014 and only received decision # 81230 on December 31, 2020, or whether they had received that decision on some earlier date. Therefore, to determine whether claimant was prevented from filing a timely request for hearing on decision # 81230 due to factors beyond their reasonable control or an excusable mistake, further inquiry is needed to determine when claimant first learned of or received decision # 81230 and why they did not file their request for hearing until January 1, 2021.

Orders No. 21-UI-159026 and 21-UI-159027 are therefore reversed, and these matters remanded for a hearing on whether claimant's late requests for hearing should be allowed and, if so, the merits of decisions # 81230 and # 105416.

DECISION: Orders No. 21-UI-159026 and 21-UI-159027 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-159026 and 21-UI-159027 or return these matters to EAB. Only a timely application for review of the subsequent order(s) will cause these matters 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 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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