

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0595

Reversed & Remanded

PROCEDURAL HISTORY: On May 13, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work, and therefore not eligible to receive unemployment insurance benefits, for the week of April 4, 2021 through April 10, 2021 (week 14-21)(decision # 141154). On May 13, 2021, the Department also served notice of an administrative decision concluding that claimant was not able to work, and therefore not eligible to receive benefits, for the week of February 28, 2021 through March 6, 2021 (week 09-21) (decision # 144653). On June 2, 2021, decisions # 141154 and # 144653 became final without claimant having filed a request for hearing. On June 4, 2021, claimant filed late requests for hearing on decisions # 141154 and # 144653.

On July 2, 2021, ALJ Kangas issued Order No. 21-UI-169761, dismissing claimant's request for hearing on decision # 141154 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 16, 2021. On July 2, 2021, ALJ Kangas also issued Order No. 21-UI-169762, dismissing claimant's request for hearing on decision # 144653 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 16, 2021.

On July 19, 2021, claimant filed a late response to the appellant questionnaires and a timely application for review of Orders No. 21-UI-169761 and 21-UI-169762 with the Employment Appeals Board (EAB). On July 20, 2021, ALJ Kangas mailed a letter to claimant stating that because claimant's response to the questionnaire for Order No. 21-UI-169761 was late, the Office of Administrative Hearings (OAH) would not consider it or issue another order, and that Order No. 21-UI-169761 remained in effect. Also on July 20, 2021, ALJ Kangas mailed a letter to claimant stating that because claimant's response to the questionnaire for Order No. 21-UI-169762 was late, the Office of Administrative Hearings (OAH) would not consider it or issue another order, and that Order No. 21-UI-169762 remained in effect. This matter is before EAB based upon claimant's timely application for review of Orders No. 21-UI-169761 and 21-UI-169762.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-169761 and 21-UI-169762. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0595 and 2021-EAB-0596).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant’s response to the appellant questionnaire, and has 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 May 13, 2021, the Department mailed decision # 141154 to claimant’s address on file with the Department. Decision # 141154 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 June 2, 2021.” Exhibit 1 at 2.

(2) On May 13, 2021, the Department mailed decision # 144653 to claimant’s address on file with the Department. Decision # 144653 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 June 2, 2021.” Exhibit 1 at 2.

(3) In May and June 2021, claimant experienced “ongoing mail, package and . . . mailbox damage and theft.” EAB Exhibit 1 at 2. On June 3, 2021, claimant received decisions # 141154 and 144653. EAB Exhibit 1 at 1.

(4) On June 4, 2021, claimant filed her requests for hearing on decisions # 141154 and 144653. Claimant filed their request after “receiv[ing] a 2nd letter after speaking with [a Department representative] who told [claimant] to immediately file an appeal[.]” EAB Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Orders No. 21-UI-169761 and 21-UI-169762 are set aside and these matters are 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.

Claimant’s requests for hearing on decisions # 141154 and 144653 were due by June 2, 2021. Because they did not file their request for hearing until June 4, 2021, the requests were late. Orders No. 21-UI-169761 and 21-UI-169762 concluded that the record did not contain enough information to show that there was good cause for the late requests for hearing, and that claimant filed the requests within a reasonable time after the circumstances that prevented claimant from making timely hearing requests ended. Orders No. 21-UI-169761 and 21-UI-169762 at 1. These matters are remanded for further development of the record because the record on review suggests claimant may have had good cause to file the requests late and may have done so within a reasonable time.

In claimant’s response to the appellant questionnaire, claimant stated that they did not receive decisions # 141154 and # 144653 until June 3, 2021 because of “ongoing mail, package and now mailbox damage

and theft.” EAB Exhibit 1 at 2. Claimant also suggested that they received decisions # 141154 and 144653 on June 3, 2021 “due to recent heat wave/no mail.” EAB Exhibit 1 at 1. If claimant did not receive the decisions until June 3, 2021 due to theft or a mail delivery interruption, claimant may be able to establish that a factor beyond their reasonable control prevented them from filing timely requests for hearing.

Further, if the record on remand shows that such a factor existed but then ceased when claimant received the decisions on June 3, 2021, claimant’s June 4, 2021 filing date would have been within the seven-day “reasonable time.” However, in claimant’s questionnaire response, claimant stated that what prompted them to file their request for hearing on June 4, 2021 was that they spoke to a Department representative who told them to file an appeal, and that claimant did so after receiving a “2nd letter” from the Department. EAB Exhibit 1 at 1. Therefore, it is possible that claimant’s conversation with the Department representative caused claimant to become aware of decisions # 141154 and 144653, thereby causing any factor that prevented claimant from filing timely requests to cease to exist. If so, it is not clear from the record on review that claimant’s June 4, 2021 filing date occurred within a seven-day “reasonable time” of when any factor preventing claimant from timely filing ceased to exist.

On remand, the ALJ should develop the record to determine with more specificity why claimant did not receive decisions # 141154 and 144653 until June 3, 2021, whether claimant’s failure to file their hearing requests until June 4, 2021 was due to a factor beyond their reasonable control, and if so, when that factor ceased to exist. To this end, the ALJ should inquire as to the nature and extent of the mail theft and delivery interruptions claimant experienced. To the extent the record on remand shows that a factor beyond claimant’s reasonable control prevented them from timely filing, the ALJ should ask questions to determine whether claimant filed their requests for hearing within a reasonable time of the date that factor ceased to exist. To this end, the ALJ should inquire as to when claimant spoke to the Department representative who told them to file an appeal, and whether claimant’s June 4, 2021 filing date occurred within a seven-day “reasonable time” of when that conversation occurred.

Because further development of the record is necessary for a determination of whether claimant’s late requests for hearing on decisions # 141154 and # 144653 should be allowed, Orders No. 21-UI-169761 and 21-UI-169762 are reversed, and these matters are remanded.

DECISION: Orders No. 21-UI-169761 and 21-UI-169762 are set aside, and the matters remanded for further proceedings consistent with this order.

S. Alba and D. Hettle;
A. Steger-Bentz, not participating.

DATE of Service: August 6, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 21-UI-169761 and 21-UI-169762 or return these matters to EAB. Only timely applications for review of the subsequent orders 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 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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