

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0603

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On October 23, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was disqualified from receiving unemployment insurance benefits effective June 7, 2020 (decision # 144613). On November 12, 2020, decision # 144613 became final without claimant having filed a request for hearing. On February 10, 2021, the Department served notice of an administrative decision, based in part on decision # 144613, concluding that claimant received benefits to which they were not entitled and assessing an overpayment of \$6,480 in regular benefits and \$3,000 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 123348). On March 2, 2021, decision # 123348 became final without claimant having filed a request for hearing. On May 11, 2021, claimant filed late requests for hearing on decisions # 144613 and # 123348.

ALJ Kangas considered claimant's requests, and on June 15, 2021 issued Orders No. 21-UI-168702 and 21-UI-168705, dismissing claimant's late requests for hearing on decisions # 144613 and # 123348, respectively, as untimely, subject to claimant's right to renew the requests by responding to appellant questionnaires by June 29, 2021. On June 30, 2021, claimant filed late responses to the appellant questionnaires and timely applications for review of Orders No. 21-UI-168702 and 21-UI-168705 with the Employment Appeals Board. On July 20, 2021, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire responses or issue another order regarding these matters because the questionnaire responses were late. These matters come before EAB based on claimant's June 30, 2021 applications for review of Orders No. 21-UI-168702 and 21-UI-168705.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-168702 and 21-UI-168705. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0603 and 2021-EAB-0604).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching these decisions under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's response to the

appellant questionnaire and claimant's undated letter to the Office of Administrative Hearing (OAH), enclosed with their response to the appellant questionnaire, which have been marked as EAB Exhibit 1. A copy of EAB Exhibit 1 has been provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 to the record of this 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.

Claimant's written argument dated July 28, 2021 contained information that was not relevant and material to EAB's determination as required by OAR 471-041-0090(1)(b)(A). EAB therefore did not consider this additional information when reaching this decision.

FINDINGS OF FACT: (1) On October 23, 2020, the Department mailed decision # 144613 to claimant's address on file with the Department. Decision # 144613 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 November 12, 2020." Exhibit 1, decision # 144613, at 2.

(2) Claimant received decision # 144613 in October 2020. On May 11, 2021, claimant filed a late request for hearing. Claimant did not file a request for hearing prior to the filing deadline based on employer's representation that they had "erroneously checked the wrong box" in regards to the nature of the work separation and they would rectify the matter, and claimant "did not need to worry." EAB Exhibit 1 at 1. Based on the employer's representation claimant "ignored" subsequent correspondence from the Department. EAB Exhibit 1 at 1.

(3) On February 10, 2021, the Department mailed decision # 123348 to claimant's address on file with the Department. Decision # 123348 stated, "If you disagree with the amount of the overpayment, you have the right to appeal this decision . . . on or before March 2, 2021." Exhibit 1 (decision # 123348) at 2.

(4) Claimant did not receive decision # 123348 because they were experiencing unreliable mail service in their neighborhood. EAB Exhibit 1.

(5) In April 2021, claimant received an Unemployment Insurance overpayment billing statement in the amount of "\$9,480." Claimant first became aware of the existence of decision # 123348 in April 2021, when they called the Department to inquire about the overpayment billing statement and was told to file a request for hearing.

(6) On May 11, 2021, claimant filed a late request for hearing on decision # 123348.

CONCLUSION AND REASONS: Claimant's late requests for hearing on decisions # 144613 and # 123348 are dismissed.

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 deadline for claimant to file a timely request for hearing on decision # 144613 expired on November 12, 2020. Because claimant’s request for hearing on decision # 144613 was not filed until May 11, 2021, the request was late. The deadline for claimant to file a timely request for hearing on decision # 123348 expired on March 2, 2021. Because claimant’s request for hearing on decision # 123348 was not filed until May 11, 2021, the request was late.

The record fails to show that factors beyond claimant’s control prevented them from filing a timely hearing request on decision # 144613. In the statement enclosed with the appellant questionnaire response, claimant stated that they received decision # 144613 around the time that the Department mailed notice of the decision in October 2020, and did not suggest that they received it after the timely appeal deadline, or else that they were unable to file a timely request for hearing for some other reason. Therefore, claimant has not shown that they failed to file a timely request for hearing on decision # 144613 due to factors beyond their reasonable control.

Similarly, although claimant’s reliance on the employer’s statement that they would correct the record in regards to their work separation may have been a mistake on claimant’s part, it was not an “excusable mistake” within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, or the inability to follow directions despite substantial efforts to comply. Furthermore, while reasonable reliance on another might, in some circumstances, constitute excusable mistake, here any reliance by claimant on the employer’s representations that they would correct the situation with decision # 144613 was unreasonable in light of the language of decision # 144613 which stated that if claimant did not believe that decision # 144613 was correct, they could file a request to appeal on or before November 12, 2020. Claimant’s decision to rely on the employer’s assurances rather than follow the guidance issued by the Department was therefore not an excusable mistake.

Claimant did not receive decision # 123348, because they were experiencing mail delivery inconsistencies, a factor beyond claimant’s reasonable control. However, the record shows that no later than the end of April 2020, claimant was aware that decision # 123348 had been issued. In April 2020, the Department mailed claimant a monthly billing statement, which reflected the total amount of the overpayment assessed to claimant in decision # 123348. Upon receipt of this bill, claimant contacted the Department, was advised of the existence of decision # 123348, and was told that they needed to request a hearing. Therefore, the factors that prevented claimant from filing a timely request for hearing ceased to exist no later than the end of April 2020. Claimant filed his request on May 11, 2021, more than seven days, after the factors that prevented a filing had passed. Claimant did not explain why they waited eleven days or more to file the request for hearing. Therefore, claimant failed to show that they filed their late request for hearing within a reasonable time after the factor that prevented them from filing the timely request for hearing ceased to exist.

For the above reasons, claimant’s late requests for hearing on decisions # 144613 and # 123348 are subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Orders No. 21-UI-168702 and 21-UI-168705 are affirmed.

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

DATE of Service: August 5, 2021

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

NOTE: This decision denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the “Contact Us” form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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

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 الإستئناف 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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