

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0859

Reversed & Remanded

PROCEDURAL HISTORY: On June 22, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective April 25, 2021 (decision # 72609), and an administrative decision concluding that claimant did not file their claims in accordance with Department rules and was therefore ineligible to receive benefits from May 2, 2021 through May 29, 2021 (weeks 18-21 through 21-21) (decision # 80200). On June 23, 2021, the Department served notice of an administrative decision concluding that claimant was not available for work and was therefore ineligible to receive benefits from May 9, 2021 through May 22, 2021 (weeks 19-21 through 20-21). On July 12, 2021, decisions # 72609 and 80200 became final without claimant having filed a request for hearings on those decisions. On July 13, 2021, the June 23, 2021 decision became final without claimant having filed a request for hearing on that decision. On August 13, 2021, claimant filed a late request for hearing on decisions # 72609 and 80200, and the June 23, 2021 decision.

ALJ S. Lee considered claimant's request for hearings on decisions # 72609 and the June 23, 2021 decisions, and on September 29, 2021 issued Orders No. 21-UI-175892 and 21-UI-175903, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 13, 2021. ALJ Kangas considered claimant's request for hearing on decision # 80200, and on September 29, 2021 issued Order No. 21-UI-175898, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 13, 2021. On October 14, 2021, claimant filed a late response to the appellant questionnaires and a timely application for review of Orders No. 21-UI-175892, 21-UI-175898, and 21-UI-175903 with the Employment Appeals Board (EAB). On November 1, 2021, ALJ Kangas mailed letters to claimant stating that because claimant's response to the questionnaires was late, the Office of Administrative Hearings (OAH) would not consider it or issue another order, and that Orders No. 21-UI-175892, 21-UI-175898, and 21-UI-175903 remained in effect.

This matter comes before EAB based upon claimant's timely application for review of Orders No. 21-UI-175892, 21-UI-175898, and 21-UI-175903.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-175892, 21-UI-175898, and 21-UI-175903. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2021-EAB-0860, 2021-EAB-0859, and 2021-EAB-0858).

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 questionnaires, 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 June 22, 2021, the Department mailed decisions # 72609 and 80200 to claimant's address on file with the Department. Decision # 72609 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 July 12, 2021." Exhibit 1 at 2. Decision # 80200 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 July 12, 2021." Exhibit 1 at 2.

(2) On June 23, 2021, the Department mailed an administrative decision to claimant's address on file with the Department. The June 23, 2021 decision stated, "Any appeal from this decision must be filed on or before JUL 13, 2021 to be timely." Exhibit 1.

(3) Claimant personally received decisions # 72609 and 80200 and the June 23, 2021 decision on August 13, 2021. EAB Exhibit 1. Claimant did not file the request for hearings on these decisions before August 13, 2021 because they were not available at their address of record due to "black mold," "homeless[ness]," "depression," and "anxiety." EAB Exhibit 1.

CONCLUSIONS AND REASONS: Orders No. 21-UI-175892, 21-UI-175898, and 21-UI-175903 are set aside and these matters are remanded for a hearing on whether claimant's late request for hearing on decisions # 72609, 80200, and the June 23, 2021 decision 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. Claimant's requests for hearing on decisions # 72609 and 80200 were due by July 12, 2021, and their request for hearing on the June 23, 2021 decision was due by July 13, 2021. Because they did not file their request for hearings on the three decisions until August 13, 2021, the request was late.

In claimant's response to the appellant questionnaire, however, claimant stated that they did not receive the decisions until August 13, 2021 because they were absent from the address where the decisions were mailed due to factors beyond their control, including black mold, homelessness, depression, and anxiety. If claimant did not receive the decisions until August 13, 2021 because they were prevented from

retrieving their mail due to those factors, claimant may be able to establish that factors beyond their reasonable control prevented them from filing a timely request for hearings. On remand, the record must be developed to show why claimant was unable to obtain the administrative decisions for more than a month after they were mailed to claimant's address on file with the Department. For example, the record does not show if or why claimant continued to receive mail at an address they were allegedly unable to enter to retrieve their mail. The record also does not show if claimant used another address to receive mail during the relevant time period, and if so, why claimant did not inform the Department of that alternate address.

Further, if the record on remand shows that factors beyond claimant's reasonable control prevented claimant from filing the request for hearings in a timely manner, but then ceased when claimant received the decisions on August 13, 2021, claimant's August 13, 2021 filing date would be within the seven-day "reasonable time" requirement. To the extent the record on remand shows that factors beyond claimant's reasonable control prevented a timely filing, the ALJ should ask questions to determine whether claimant filed their request for hearing within a reasonable time of the date those factors ceased to exist.

Because further development of the record is necessary for a determination of whether claimant's late request for hearings on decisions # 72609, 80200, and the June 23, 2021 decision should be allowed and, if so, the merits of those decisions, Orders No. 21-UI-175892, 21-UI-175898, and 21-UI-175903 are reversed, and these matters are remanded.

DECISION: Orders No. 21-UI-175892, 21-UI-175898, and 21-UI-175903 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: November 16, 2021

NOTE: The failure of any party to appear at the hearing(s) on remand will not reinstate Orders No. 21-UI-175892, 21-UI-175898, or 21-UI-175903, or return these matters to EAB. Only a timely application for review of the subsequent orders will cause this matter to return to EAB.

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.

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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

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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