

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0889

Reversed & Remanded

PROCEDURAL HISTORY: On October 21, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from May 3, 2020 through October 17, 2020 (weeks 19-20 through 42-20) and was therefore ineligible to receive unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 145818). On October 28, 2020, the Department served notice of an administrative decision concluding that claimant received benefits to which he was not entitled and assessing an overpayment of \$133 in regular benefits and \$300 in Federal Pandemic Unemployment Compensation (FPUC) that claimant was required to repay to the Department. On November 10, 2020, decision # 145818 became final without claimant having filed a request for hearing. On November 17, 2020, the October 28, 2020 overpayment decision 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 # 145818, concluding that claimant received benefits to which he was not entitled and assessing an overpayment of \$3,002 in regular benefits and \$6,600 in FPUC benefits that claimant was required to repay to the Department (decision # 141606). On March 2, 2021, decision # 141606 became final without claimant having filed a request for hearing. On August 17, 2021, claimant filed late requests for hearings on decision # 145818, the October 28, 2020 overpayment decision, and decision # 141606.

ALJ Kangas considered claimant's requests, and on October 5, 2021 issued Orders No. 21-UI-176334, 21-UI-176332, and 21-UI-176333, dismissing claimant's requests for hearing on decisions # 145818, the October 28, 2020 overpayment decision, and decision # 141606 as late, subject to claimant's right to renew the requests by responding to appellant questionnaires by October 19, 2021. On October 20, 2021, claimant filed late responses to the appellant questionnaires and timely applications for review of Orders No. 21-UI-176334, 21-UI-176332, and 21-UI-176333 with the Employment Appeals Board (EAB). On November 1, 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 the matters because the questionnaire responses were late. These matters come before EAB based upon claimant's October 20, 2021 applications for review of Orders No. 21-UI-176334, 21-UI-176332, and 21-UI-176333.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders 21-UI-176334, 21-UI-176332, and 21-UI-176333. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0889, 2021-EAB-0891, and 2021-EAB-0890).

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 for Orders No. 21-UI-176334, 21-UI-176332, and 21-UI-176333, marked as EAB Exhibit 1. A copy of EAB Exhibit 1 has been provided to the parties with these decisions. 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.

CONCLUSIONS AND REASONS: Orders No. 21-UI-176334, 21-UI-176332, and 21-UI-176333 are set aside and these matters remanded for a hearing on whether claimant’s late requests for hearing on decision # 145818, the October 28, 2020 overpayment decision, and decision # 141606 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. A letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(1)(q).

The deadlines to file timely requests for hearing on decision # 145818, the October 28, 2020 overpayment decision, and decision # 141606 were November 10, 2020, November 17, 2020, and March 2, 2021. Claimant filed their requests for hearing on August 17, 2021. Therefore, the requests for hearing were late.

However, the record under review indicates that claimant may have had good cause to file their requests for hearing late. Claimant stated in their questionnaire response that they did not receive one or all of the administrative decisions until March 10, 2021. EAB Exhibit 1 at 1. Claimant also stated that they “became aware” of the decision or decisions on March 10, 2021, but “never found it.” EAB Exhibit 1 at 2. The fact that claimant did not receive the decision or decisions in the mail may have constituted a factor beyond claimant’s reasonable control that prevented claimant from filing a request for hearing by the respective deadlines. However, the record is insufficient to determine when claimant learned of the existence of decision # 145818, the October 28, 2020 overpayment decision, and decision # 141606, and whether or not claimant gained that knowledge with sufficient time to file a request for hearing by the deadline for each decision. The record does not show if or when claimant ever received copies of any of the three administrative decisions. Further, to the extent that claimant’s failure to receive decision # 145818, the October 28, 2020 overpayment decision, or decision # 141606 in the mail constituted a factor beyond claimant’s reasonable control, the record is insufficient to determine whether claimant’s August 17, 2021 late request for hearing was filed within a reasonable time—that is, within seven days after the circumstances that prevented a timely filing ceased to exist.

In addition, claimant's questionnaire response shows that claimant "was in communication with" multiple sections of the Department beginning on March 10, 2021, and "each referred claimant to each other to resolve [claimant's] issue," until a "PUA claims specialist" filed a request for hearing for claimant on or about August 17, 2021. EAB Exhibit 1 at 1, 2. Further inquiry is needed to determine if claimant made any requests to the Department that should have been construed as requests for a hearing during one of those conversations before August 17, 2021. The record also must be developed to show what claimant knew and when about each administrative decision, and what advice they received from the Department regarding each decision.

Because further development of the record is necessary for a determination of whether claimant had good cause to file the late requests for hearings, these matters are remanded. If the ALJ concludes that claimant had good cause for filing the late requests for hearing, the ALJ must then develop a record on the merits of the decisions that pertain to those requests.

DECISION: Orders No. 21-UI-176334, 21-UI-176332, and 21-UI-176333 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 23, 2021

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 21-UI-176334, 21-UI-176332, and 21-UI-176333 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these 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

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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