

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0932

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On October 9, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$2,416 overpayment that claimant was required to repay to the Department, a \$604 monetary penalty, and a 16 week penalty disqualification from future benefits (decision #200264). On October 29, 2018, decision # 200264 became final without claimant having filed a request for hearing. On September 7, 2021, claimant filed a late request for hearing on decision # 200264.

ALJ Kangas considered claimant's request, and on September 27, 2021, issued Amended Order No. 21-UI-175672,¹ dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 11, 2021. On October 15, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Amended Order No. 21-UI-175672 with the Employment Appeals Board (EAB). On November 1, 2021, ALJ Kangas mailed a letter stating that OAH would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late. This matter comes before EAB based upon claimant's October 15, 2021 application for review of Amended Order No. 21-UI-175672.

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 a statement attached thereto, 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

¹ On September 13, 2021, ALJ Kangas issued Order No. 21-UI-174568, dismissing claimant's request for hearing as late. On September 20, 2021, the Office of Administrative Hearings (OAH) received notice that the copy of Order No. 21-UI-174568 mailed to claimant on September 13, 2021 was returned as undeliverable. Order No 21-UI-174568 and Amended Order No. 21-UI-175672 are identical except for the deadlines associated with each order and the address to which they were mailed.

our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

CONCLUSIONS AND REASONS: Amended Order No. 21-UI-175672 is set aside and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 200264 should be allowed and, if so, the merits of that decision.

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. Under OAR 471-040-0010(1)(b)(A), good cause for filing a late request for hearing does not include "failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal."

The request for hearing on decision # 200264 was due by October 29, 2018. Because claimant did not file their request for hearing until September 7, 2021, the request was late. On the statement attached to their appellant questionnaire response, claimant indicated that they did not file their request for hearing prior to the deadline because they were "unaware of an appeal decision, process or correspondence as [they] did not receive any of the mail" that the Department sent to them. EAB Exhibit 1 at 3. Claimant also indicated that they moved to San Diego, California "between March 2018 and June 2018," and that they "only received [the appellant questionnaire] on October 6, 2021 upon updating [their] address with the Office of Employment [sic]." EAB Exhibit 1 at 3. The record also shows that the original Order No. 21-UI-174568, which was returned as undeliverable, was mailed to claimant at a Scappoose, Oregon address; that decision # 200264 was mailed to the same address in Scappoose in 2018; and that Amended Order No. 21-UI-175672, to which claimant responded, was mailed to claimant at a San Diego address. Exhibit 1 at 1. When viewed as a whole, it appears that claimant did not receive decision # 200264 because they had moved and were no longer receiving mail at the address in Scappoose.

If claimant did not file a timely request for hearing on decision # 200264 because they did not receive a copy of the administrative decision, claimant may have filed the request late due to factors beyond their control. However, the weeks of benefits at issue in decision # 200264 are the weeks including February 25, 2018 through April 14, 2018 (weeks 09-18 through 15-18). Exhibit 1 at 3. Since claimant was claiming benefits during at least part of the period of time during which they were apparently in the process of moving to San Diego, further inquiry is needed to determine precisely when claimant moved to San Diego, if they were claiming benefits during that time, and whether they notified the Department of their updated address when they moved. If claimant failed to notify the Department of their updated address while claiming benefits, and if they did not receive decision # 200264 as a result, OAR 471-040-0010(1)(b)(A) may preclude a finding that claimant had good cause to file the late request for hearing.

Even if OAR 471-040-0010(1)(b)(A) does not apply to claimant's circumstances, more inquiry is needed to determine when the factors beyond claimant's reasonable control ceased, and whether claimant thereafter filed the request for hearing within a reasonable time. Claimant indicated in their statement that they filed their hearing request sometime in late August or early September 2021 after

“discussing with the agent that [they] had not responded to an appeal or hearing.” EAB Exhibit 1 at 3. It is not clear from this statement when claimant first learned about decision # 200264 and, therefore, how much time passed between learning of the administrative decision and filing the request for hearing. On remand, inquiry should be made to determine when claimant first learned about the administrative decision and whether they filed the request within a reasonable time after learning about it.

Amended Order No. 21-UI-175672 therefore is reversed, and this matter remanded for a hearing on whether claimant’s late request for hearing should be allowed and, if so, the merits of decision # 200264.

DECISION: Amended Order No. 21-UI-175672 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: November 18, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-175672 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this 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 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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