

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0988

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On August 27, 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 unemployment insurance benefits, and assessing a \$3,796 overpayment that claimant was required to repay to the Department, a \$569.40 monetary penalty, and a 26-week disqualification from future benefits (decision # 193926). On September 17, 2018, decision # 193926 became final without claimant having filed a request for hearing. On December 22, 2020, claimant filed a late request for hearing.

ALJ Kangas considered claimant's request, and on January 7, 2021 issued Order No. 21-UI-158769, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 21, 2021. On January 25, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-158769 with the Employment Appeals Board (EAB). On March 3, 2021, ALJ Kangas mailed a letter to claimant stating that because claimant's response to the appellant questionnaire was late, the Office of Administrative Hearings (OAH) would not consider the response or issue another order regarding the matter, and Order No. 21-UI-158769 therefore remained in effect. This matter comes before EAB based upon claimant's January 25, 2021 application for review of Order No. 21-UI-158769.

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.

The parties may offer new information into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ

and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

CONCLUSIONS AND REASONS: Order No. 21-UI-158769 is set aside and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 193926 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.

The deadline for a timely request for hearing on decision # 193926 was September 17, 2018. Because claimant filed their request for hearing on December 22, 2020, the request was late. In their response to the appellant questionnaire, claimant indicated that they "did not receive" an administrative decision mailed to them on August 27, 2018, possibly due to "mail theft." EAB Exhibit 1 at 1. Claimant also indicated that they were prompted to file their request for hearing "once garnished," suggesting that claimant may not have received or otherwise known about decision # 193926 before their wages were garnished. EAB Exhibit 1 at 1. However, the record does not contain sufficient information to show if there was good cause to extend the 20-day deadline to request a hearing, and if so, whether claimant filed their request for hearing within a reasonable time. For these reasons, the matter must be remanded for a hearing to develop the record to determine if the late request for hearing should be allowed, and if so, on the merits of decision # 193926.

On remand, the record must be developed to show if factors beyond claimant's reasonable control, or an excusable mistake, caused claimant to miss the September 17, 2018 deadline. Such inquiry should include, but not be limited to, questions regarding claimant's allegation that they experienced mail theft, whether the mail theft was from claimant's address as listed on decision # 193926, and when the theft occurred. If the mail theft occurred at a different time than when decision # 193926 was issued, the record must be developed to determine if the mail theft affected claimant's receipt of mail regarding their unemployment insurance benefits that may have alerted claimant to the existence of decision # 193926.

The record does not show the details of claimant's attempts to determine what caused the garnishment, and when they learned information that would have alerted them to the existence of decision # 193926 or their right to request a hearing on that decision. On remand, the record must also be developed to show on what date claimant learned of decision # 193926, including when claimant's wages were garnished due to decision # 193926 or another Department decision.

If the record shows that claimant's failure to file their hearing request was due to a factor beyond claimant's reasonable control, it must then also be developed to show when that factor ceased to exist. The ALJ should ask questions to determine whether claimant filed their request 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 received decision # 193926 or otherwise learned the content of decision # 193926, including

their right to request a hearing on that decision. The record must be developed to show whether claimant's December 22, 2020 filing date occurred within a seven-day "reasonable time" of when claimant received decision # 193926.

Order No. UI-158769 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 # 193926.

DECISION: Order No. 21-UI-158769 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: November 29, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-158769 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 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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