

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1019

Reversed & Remanded

PROCEDURAL HISTORY: On January 4, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from September 27, 2020 through October 3, 2020 (week 40-20), and therefore was not eligible to receive unemployment insurance benefits for that week (decision # 124447). On January 4, 2021, the Department sent claimant a second administrative decision concluding that claimant was not able to work from October 11, 2020 through October 17, 2020 (week 42-20) and until the reason for the denial had ended (decision # 125545).¹ On January 25, 2021, decisions # 124447 and 125545 became final without claimant having filed a request for hearing. On February 2, 2021, the Department served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to receive PUA benefits effective February 2, 2020. On February 22, 2021, the February 2, 2021 administrative decision became final without claimant having filed a request for hearing. On March 5, 2021, claimant filed a late request for hearing on decision # 125545.² On March 25, 2021, the Department served notice of an administrative decision concluding that claimant filed a late claim for unemployment insurance benefits for week 40-20 and therefore was not eligible to receive benefits for that week (decision # 80042). ALJ Kangas considered claimant's request for hearing on decision # 125545, and on April 12, 2021 issued Order No. 21-UI-164564 dismissing the request as late, subject to

¹ EAB has taken notice of this fact, which is contained in Office of Administrative Hearings (OAH) records. OAR 471-041-0090(1) (May 13, 2019). A copy of decision # 125545 has been provided to the parties with this decision. Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

² EAB has taken notice of this fact, which is contained in OAH records. OAR 471-041-0090(1). A copy of the record of claimant's request for hearing on decision # 125545 has been provided to the parties with this decision. Any party that objects to our taking notice of this information 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 noticed fact will remain in the record. The record does not show why the Department did not consider the March 5, 2021 request for hearing to be a request for hearing on decision # 124447 and/or the February 2, 2021 administrative decision.

claimant's right to renew the request by responding to an appellant questionnaire by April 26, 2021.³ On April 14, 2021, decision # 80042 became final without claimant having filed a request for hearing. On May 3, 2021, Order No. 21-UI-164564 became final without claimant having filed a response to the appellant questionnaire or an application for review of Order No. 21-UI-164564 with the Employment Appeals Board (EAB).⁴ On July 23, 2021, claimant filed a late request for hearing on decision # 124447, the February 2, 2021 administrative decision, and decision # 80042.

ALJ Kangas considered claimant's request for hearings on decision # 124447, the February 2, 2021 administrative decision, and decision # 80042, and on August 4, 2021 issued Orders No. 21-UI-171808, 21-UI-171809 and 21-UI-171807, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 18, 2021. On August 19, 2021, claimant filed a late response to the appellant questionnaires and a timely application for review of Orders No. 21-UI-171808, 21-UI-171809 and 21-UI-171807 with EAB. On November 29, 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-171808 and 21-UI-171807 remained in effect.⁵ This matter comes before EAB based upon claimant's timely application for review of Orders No. 21-UI-171808, 21-UI-171809 and 21-UI-171807.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-171808, 21-UI-171809 and 21-UI-171807. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2021-EAB-1019, 2021-EAB-1020, and 2021-EAB-1018).

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) In October 2020, claimant began experiencing homelessness and did not have a telephone or other personal device to use for communicating with the Department. EAB Exhibit 1 at 2.

³ EAB has taken notice of this fact, which is contained in OAH records. OAR 471-041-0090(1). A copy of Order No. 21-UI-164564 and an envelope showing that the order was returned to OAH as undeliverable have been provided to the parties with this decision. Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

⁴ EAB has taken notice of this fact, which is contained in OAH records. OAR 471-041-0090(1). A copy of the information has been provided to the parties with this decision. Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

⁵ OAH did not send a letter to claimant regarding Order No. 21-UI-171809, but that case, 2021-UI-39760, is closed at OAH at this time.

(2) Sometime after October 2020, claimant began living in their car. Sometime thereafter, claimant's car, containing all of claimant's belongings, was stolen and claimant was "in the streets." EAB Exhibit 1 at 2.

(3) On January 4, 2021, the Department mailed decision # 124447 to claimant's address on file with the Department. Decision # 124447 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 January 25, 2021." Exhibit 1 at 2.

(4) On February 2, 2021, the Department mailed an administrative decision to claimant's address on file with the Department. The February 2, 2021 administrative decision stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by February 22, 2021." Exhibit 1 at 2.

(5) On March 25, 2021, the Department mailed decision # 80042 to claimant's address on file with the Department. Decision # 80042 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 April 14, 2021." Exhibit 1 at 2.

(6) On May 9, 2021, Order No. 21-UI-164564 was returned to OAH as undeliverable, after someone wrote on the envelope, "NOT AT THIS ADDRESS MOVED!"⁶

(7) In June 2021, claimant "got housed." EAB Exhibit 1 at 2. In July 2021, claimant obtained a telephone and contacted the Department regarding the status of their unemployment benefits claim. EAB Exhibit 1 at 2.

CONCLUSIONS AND REASONS: Orders No. 21-UI-171808, 21-UI-171809, and 21-UI-171807 are set aside and these matters are remanded for a hearing on whether claimant's late request for hearing on decision # 124447, the February 2, 2021 administrative decision, and decision # 80042 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 decision # 124447, the February 2, 2021 administrative decision, and decision # 80042 were due by January 25, 2021, February 22, 2021, and April 14, 2021, respectively. Because claimant did not file their requests for hearing on the decisions until July 23, 2021, the requests were late for all three decisions.

⁶ EAB has taken notice of this fact, which is contained in OAH records. OAR 471-041-0090(1). A copy of the information has been provided to the parties with this decision. Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

In claimant's response to the appellant questionnaire, however, claimant stated that they did not receive "one" administrative decision, referring to one or all of the administrative decisions at issue because they were experiencing homelessness and could not afford to have a telephone or other personal device to use to contact the Department. EAB Exhibit 1 at 1, 2. If claimant did not receive the administrative decisions at issue here because they were prevented from receiving them by the communication barriers posed by homelessness and the inability to afford a telephone, 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 identify which of the decisions at issue here that claimant did not receive: decision # 124447, the February 2, 2021 administrative decision, and/or decision # 80042. If claimant received any of those decisions, the record must be developed to show when claimant received them. If claimant never received those decisions, the record must be developed to show why claimant did not receive each decision that claimant did not receive. 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. On remand, the record must be developed to show what, if any, efforts claimant made to stay in contact with the Department while experiencing homelessness, and whether they had an address that the Department could use to contact claimant, and when, if ever, claimant was able to obtain mail sent to that address. It is reasonable to presume that claimant lost items when their car was stolen. The record must be developed to show how that event affected claimant's ability to receive and respond to the administrative decisions from the Department.

To the extent the record on remand shows that factors beyond claimant's reasonable control prevented a timely filing of the request for hearings, the ALJ should ask questions to determine whether claimant filed their request for hearings 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 decision # 124447, the February 2, 2021 administrative decision, and decision # 80042 should be allowed and, if so, the merits of those decisions, Orders No. 21-UI-171808, 21-UI-171809, and 21-UI-171807 are reversed, and these matters are remanded.

DECISION: Orders No. 21-UI-171808, 21-UI-171809, and 21-UI-171807 are set aside, and these matters remanded for further proceedings consistent with these decisions.

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

DATE of Service: December 7, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 21-UI-171808, 21-UI-171809, and 21-UI-171807 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these matters 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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