

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0226

Reversed & Remanded

PROCEDURAL HISTORY: On June 14, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed late claims for unemployment insurance benefits for the weeks including May 2, 2021 through May 15, 2021 (weeks 18-21 through 19-21) and therefore was ineligible to receive unemployment insurance benefits for those weeks (decision # 112931). On July 6, 2021, decision # 112931 became final without claimant having filed a request for hearing. On July 19, 2021, the Department served notice of an administrative decision concluding that claimant failed to register for work in accordance with the Department's rules and was therefore ineligible to receive benefits for the week of June 27, 2021 through July 3, 2021 (week 26-21) and until the reason for the denial had ended. On August 9, 2021, the July 19, 2021 administrative decision became final without claimant having filed a request for hearing. On September 11, 2021, claimant filed late requests for hearings on decision # 112931 and the July 19, 2021 administrative decision.

ALJ Kangas considered claimant's requests, and on September 20, 2021 issued Orders No. 21-UI-175138 and 21-UI-175146, dismissing claimant's late requests for hearings on decision # 112931 and the July 19, 2021, respectively, as untimely, subject to claimant's right to renew the requests by responding to appellant questionnaires by October 4, 2021. On October 7, 2021, claimant filed a late response to the appellant questionnaires and timely applications for review of Orders No. 21-UI-175138 and 21-UI-175146 with the Employment Appeals Board (EAB). On February 7, 2022, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue additional orders regarding these matters because the questionnaire response was late. These matters come before EAB based on claimant's October 7, 2021 applications for review of Orders No. 21-UI-175138 and 21-UI-175146.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-175138 and 21-UI-175146. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0225 and 2022-EAB-0226).

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 response

to the appellant questionnaires, 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.

FINDINGS OF FACT: (1) On June 14, 2021, the Department mailed decision # 112931 to claimant's address on file with the Department. Decision # 112931 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 6, 2021." Exhibit 1 at 2.

(2) On July 19, 2021, the Department mailed an administrative decision to claimant's address on file with the Department. The July 19, 2021 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 no later than 08/09/2021." Exhibit 1 at 1.

(3) On September 11, 2021, claimant was able to reach the Department to find out why they had not been receiving unemployment insurance benefits for all the weeks they had claimed. EAB Exhibit 1 at 1. The Department told claimant that the weeks had been denied due to claimant having claimed the weeks late and a failure to complete iMatchSkills, and that they could appeal the denials. Exhibit 2 at 2-3. On September 11, 2021, claimant requested hearings on those matters.

CONCLUSIONS AND REASONS: Orders No. 21-UI-175138 and 21-UI-175146 are set aside and these matters are remanded for a hearing on whether claimant's late requests for hearing on decisions # 112931 and the June 19, 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 request for hearing on decision # 112931 was due by July 6, 2021, and their request for hearing on the July 19, 2021 decision was due by August 9, 2021. Because they did not file their requests for hearings until September 11, 2021, the requests were late. Orders No. 21-UI-175138 and 21-UI-175146 concluded that the record did not contain enough information to show that there was good cause for the late requests for hearing, or that claimant filed the requests within a reasonable time after the circumstances that prevented claimant from making timely hearing requests ended. Orders No. 21-UI-175138 and 21-UI-175146 at 1. These matters are remanded for further development of the record because the record on review suggests claimant may have had good cause to file the requests late and may have done so within a reasonable time.

In claimant's response to the appellant questionnaires, claimant stated that they did not receive the decision mailed to them on June 14, 2021 (decision # 112931). EAB Exhibit 1 at 1. Claimant also stated that they "never received a notice so was unaware there was an issue or deadline." EAB Exhibit 1 at 1. If

claimant did not receive or know the content of decision # 112931 and the July 19, 2021 decision until September 11, 2021, claimant may be able to establish that a factor beyond their reasonable control prevented them from filing timely requests for hearing on decision # 112931 and the July 19, 2021 decision.

Further, if the record on remand shows that such a factor existed but then ceased when claimant communicated with the Department on September 11, 2021, claimant's September 11, 2021 filing date would have been within the seven-day "reasonable time." On remand, the ALJ should develop the record to clarify if claimant failed to receive one or both administrative decisions. If the record on remand shows that claimant received one or both of the decisions, the record should be developed to show when claimant received them, why claimant asserted that they did not receive them, whether they failed to file timely requests for hearing due to some other reason, whether that reason was the result of a factor beyond their reasonable control, and, if so, when that factor ceased to exist. To this end, the ALJ should also inquire as to where and how claimant received their mail during the relevant time periods and whether claimant experienced any problems with receiving their mail. The record must also be developed to show if claimant became aware of either of the two administrative decisions in some other fashion before September 11, 2021, even if they did not receive copies of the decisions, and, if so, what claimant did in response to that information.

Because further development of the record is necessary for a determination of whether claimant's late request for hearings on decision # 112931 and the June 19, 2021 administrative decision should be allowed and, if so, the merits of those decisions, Orders No. 21-UI-175138 and 21-UI-175146 are reversed, and these matters are remanded.

DECISION: Orders No. 21-UI-175138 and 21-UI-175146 are set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: February 17, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 21-UI-175138 and 21-UI-175146 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 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 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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