

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0331

Reversed & Remanded

PROCEDURAL HISTORY: On April 1, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that Rapid Rooter of Central Oregon Inc. discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective December 13, 2020 (decision # 120730). On April 2, 2021, the Department served notice of an administrative decision concluding that Chris Aichele Trucking discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective March 7, 2021 (decision # 130815). On April 13, 2021, the Department served notice of an administrative decision concluding that claimant was not able to work from February 14, 2021 through April 3, 2021 (weeks 07-21 through 13-21) and therefore was ineligible to receive unemployment insurance benefits for those weeks and until the reason for denial had ended (decision # 75448). On April 21, 2021, decision # 120730 became final without claimant having filed a request for hearing. On April 22, 2021, decision # 130815 became final without claimant having filed a request for hearing. On May 3, 2021, decision # 75448 became final without claimant having filed a request for hearing. On September 23, 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 therefore was ineligible to receive unemployment insurance benefits for the week of August 29, 2021 through September 4, 2021 (week 35-21), and until the reason for the denial had ended. On October 13, 2021, the September 23, 2021 administrative decision became final without claimant having filed a request for hearing.

On October 27, 2021, claimant filed late requests for hearing on decisions # 120730, 130815, 75448, and the September 23, 2021 administrative decision. ALJ Kangas considered claimant's requests, and on November 2, 2021 issued Orders No. 21-UI-178691, 21-UI-178699, 21-UI-178687, and 21-UI-178697, dismissing claimant's requests for hearing as late, subject to claimant's right to renew the request by responding to appellant questionnaires by November 16, 2021. On November 22, 2021, claimant filed late responses to the appellant questionnaires and timely applications for review of Orders No. 21-UI-178691, 21-UI-178699, 21-UI-178687, and 21-UI-178697 with the Employment Appeals Board (EAB). On February 8, 2022 and February 9, 2022, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire responses or issue additional orders regarding these matters because claimant's questionnaire responses were late. These

matters come before EAB based upon claimant's November 22, 2022 applications for review of Orders No. 21-UI-178691, 21-UI-178699, 21-UI-178687, and 21-UI-178697.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-178691, 21-UI-178699, 21-UI-178687, and 21-UI-178697. For case-tracking purposes, this decision is being issued in quadruplicate (EAB Decisions 2022-EAB-0330, 2022-EAB-0328, 2022-EAB-0331 and 2022-EAB-0329).

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 copies of decisions # 120730, 130815, 75448, and the September 23, 2021 administrative decision, and claimant's appellant questionnaire responses related to each of those decisions, respectively. Each administrative decision and corresponding questionnaire has been marked as EAB Exhibits 1, 2, 3, and 4, respectively, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1, 2, 3, or 4 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 exhibits will remain in the record.

FINDINGS OF FACT: (1) During 2020, claimant experienced a period of homelessness. EAB Exhibit 1 at 2; EAB Exhibit 2 at 2; EAB Exhibit 3 at 2; and EAB Exhibit 4 at 2. Despite this homelessness, claimant attempted to provide care for his grandmother. EAB Exhibit 1 at 2; EAB Exhibit 2 at 2; EAB Exhibit 3 at 2; and EAB Exhibit 4 at 2.

(2) On April 1, 2021, the Department mailed decision # 120730 to claimant's address on file with the Department. Decision # 120730 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 21, 2021." EAB Exhibit 1 at 5.

(3) On April 2, 2021, the Department mailed decision # 130815 to claimant's address on file with the Department. Decision # 130815 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 22, 2021." EAB Exhibit 2 at 4.

(4) On April 13, 2021, the Department mailed decision # 75448 to claimant's address on file with the Department. Decision # 75448 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 May 3, 2021." EAB Exhibit 3 at 4.

(5) On September 23, 2021, the Department mailed the September 23, 2021 administrative decision to claimant's address on file with the Department. The September 23, 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 no later than [October 13, 2021]." EAB Exhibit 4 at 3.

CONCLUSIONS AND REASONS: Orders No. 21-UI-178691, 21-UI-178699, 21-UI-178687, and 21-UI-178697 are set aside and these matters are remanded for a hearing on whether claimant's late requests for hearing on decisions # 120730, 130815, 75448, and the September 23, 2021 administrative 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 requests for hearing on decisions # 120730, 130815, 75448, and the September 23, 2021 administrative decision were due by April 21, 2021, April 22, 2021, May 3, 2021, and October 13, 2021, respectively. Because claimant did not file their requests for hearing on the decisions until October 27, 2021, the requests were late on all four decisions.

In claimant's responses to the appellant questionnaire, however, claimant has indicated that they were experiencing "homeless[ness]" during the applicable 20-day period of time available to them for filing a timely request for hearing on decisions # 120730, 130815, 75448, and the September 23, 2021 administrative decision, and that, as a result, their ability to meet the 20-day filing deadline with respect to the respective decisions was "out of [their] control." EAB Exhibit 1 at 2; EAB Exhibit 2 at 2; EAB Exhibit 3 at 2; and EAB Exhibit 4 at 2. Claimant's assertion in this regard suggests that claimant may not have received one or more of the administrative decisions because they were not in a position where they could reliably receive mail. If claimant's homelessness prevented them from receiving one or more of the decisions at issue within the 20-day period of time for filing a timely request for hearing, claimant may be able to establish that factors beyond their reasonable control prevented them from filing timely requests for hearing. On remand, further development of the record is needed to determine which of the four administrative decisions claimant did not receive and the circumstances that impacted their failure to receive them. Because claimant has indicated in their responses that they were also taking care of their grandmother during this period, additional inquiry should address whether the circumstances surrounding this care—such as whether this care was provided in the home of claimant's grandmother—might have provided claimant an alternate location to receive mail during the relevant time period.

For those of the four administrative decisions that claimant did receive, further inquiry is needed to determine when claimant received those decisions and whether claimant's circumstances at the time of receipt might establish good cause such that a late hearing on any of the decisions should be allowed. This good cause inquiry should include questions that address whether claimant's October 27, 2021 requests for hearing were filed within the seven-day "reasonable time" period after the circumstances that prevented claimant from timely filing their request for hearing had ceased to exist.

Because further development of the record is necessary for a determination of whether claimant's late requests for hearings on decisions # 120730, 130815, 75448, and the September 23, 2021 administrative decision should be allowed and, if so, the merits of those decisions, Orders No. 21-UI-178691, 21-UI-178699, 21-UI-178687, and 21-UI-178697 are reversed, and these matters are remanded.

DECISION: Orders No. 21-UI-178691, 21-UI-178699, 21-UI-178687, and 21-UI-178697 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: March 16, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 21-UI-178691, 21-UI-178699, 21-UI-178687, and 21-UI-178697 or return these matters to EAB. Only a timely application 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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