

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0463

Order No. 22-UI-189658 Reversed & Remanded

PROCEDURAL HISTORY: On December 1, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective October 27, 2019 (decision # 83406). On December 21, 2020, decision # 83406 became final without claimant having filed a request for hearing. On December 27, 2021, claimant filed a late request for hearing. On March 15, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for March 24, 2022 at 2:30 p.m. on whether claimant's late request for hearing should be allowed and, if so, the merits of decision #83406. On March 24, 2022, ALJ Blam-Linville issued Order No. 22-UI-189658, concluding that claimant's request for hearing was dismissed because claimant withdrew the request. On April 13, 2022, claimant filed an application for review of Order No. 22-UI-189658 with the Employment Appeals Board (EAB).

On December 8, 2021, the Department served notice of an administrative decision concluding that claimant was overpaid \$1,800 in Lost Wages Assistance (LWA) benefits that she had to repay the Department (decision # 0560238). On December 27, 2021, claimant filed a timely request for hearing on decision # 0560238. On January 20, 2022, the Department served notice of an administrative decision amending decision # 0560238 by waiving collection of the \$1,800 overpayment because claimant had shown that recovery of the overpaid benefits was against equity and good conscience (decision # 122104). On March 11, 2022, the Department issued Order No. 2022-UI-05218, dismissing claimant's request for hearing on decision # 0560238 because the decision had been modified by decision # 122104.¹

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence includes OAH's March 24, 2022 "Memo to File / Telephone Record" of a voice mail left by claimant, which has been marked as EAB

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). 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 facts will remain in the record.

Exhibit 1, and claimant's April 13, 2022 application for review of Order No. 22-UI-189658, which has been marked as EAB Exhibit 2. Copies of EAB Exhibits 1 and 2 have been provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1 or 2 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(s) will remain in the record.

FINDING OF FACT: Claimant telephoned OAH and left a voice message before the March 24, 2022 hearing on decision # 83406.

CONCLUSIONS AND REASONS: Order No. 22-UI-189658 is reversed, and this matter remanded for a hearing on whether claimant's request for hearing on decision # 83406 should be dismissed because they withdrew the request or because the request was late without good cause, and if not, the merits of decision # 83406.

Withdrawal of Request for Hearing. ORS 657.270(7)(a) and OAR 471-040-0035(1) (August 1, 2004) provide that an ALJ may dismiss a request for hearing if the request is withdrawn by the requesting party. Order No. 22-UI-189658's finding that claimant withdrew their request for hearing on decision # 83406 apparently was based on OAH's record of claimant having "called and left a voice mail to cancel the hearing." EAB Exhibit 1. However, claimant asserted in their written argument that they cancelled their request for hearing on decision # 0560238, and did not cancel the hearing on decision # 83406. EAB Exhibit 2. Further inquiry is needed into the facts necessary for a determination of whether claimant withdrew their request for hearing on decision # 83406. Order No. 22-UI-189658 therefore is reversed, and this matter remanded for a hearing on whether claimant's request for hearing should be dismissed on that basis.

Late Request for Hearing. 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 # 83406 was due by December 21, 2020. Because claimant did not file their request for hearing until December 27, 2021, their request for hearing was late. Therefore, this matter also is remanded for an inquiry into the facts necessary for a determination of whether claimant's late request for hearing was with good cause and filed within a reasonable time, and therefore should be allowed.

Order No. 22-UI-189658 therefore is reversed, and this matter remanded for a hearing on whether claimant's request for hearing on decision # 83406 should be dismissed because they withdrew the request or because the request was late without good cause, and if not, the merits of decision # 83406.

DECISION: Order No. 22-UI-189658 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: May 6, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-189658 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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