

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0674

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On October 27, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work from the employer without good cause and was therefore disqualified from receiving unemployment insurance benefits effective November 3, 2019 (decision # 145146). On October 28, 2020, the Department served notice of an administrative decision concluding that claimant quit work without good cause from the employer and was therefore disqualified from receiving benefits effective September 29, 2019 (decision # 162500). On November 16, 2020, decision # 145146 became final without claimant having filed a request for hearing. On November 17, 2020, decision # 162500 became final without claimant having filed a request for hearing. On January 4, 2022, claimant filed late requests for hearing on decisions # 145146 and 162500.

ALJ Kangas considered claimant's requests. On March 24, 2022, ALJ Kangas issued Order No. 22-UI-189583, dismissing claimant's request for hearing on decision # 145146 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 7, 2022. On March 28, 2022, ALJ Kangas issued Order No. 22-UI-189560, dismissing claimant's request for hearing on decision # 162500 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 11, 2022. On April 12, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Orders No. 22-UI-189583 and 22-UI-189560 with the Employment Appeals Board (EAB). On June 16, 2022, ALJ Kangas mailed letters to claimant stating that because claimant's response to the appellant questionnaire was late, it would not be considered, another order would not be issued, and Orders No. 22-UI-189583 and 22-UI-189560 would remain in effect. These matters come before EAB based upon claimant's April 12, 2022 application for review of Orders No. 22-UI-189583 and 22-UI-189560 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-189583 and 22-UI-189560. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0675 and 2022-EAB-0674).

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, 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.

CONCLUSIONS AND REASONS: Orders No. 22-UI-189583 and 22-UI-189560 are set aside and these matters remanded for hearings on whether claimant’s late requests for hearing on decisions # 145146 and 162500 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.

The requests for hearing on decisions # 145146 and 162500 were due by November 16, 2020 and November 17, 2020, respectively. Because claimant did not file their requests for hearing on either decision until January 4, 2022, the requests were late. On their appellant questionnaire response, under the question asking when they received the administrative decision,¹ claimant indicated that they received it on “April 1, 2022.” EAB Exhibit 1 at 1. As the record shows that claimant filed their request for hearing on both administrative decisions on January 4, 2022, claimant’s answer here is unlikely to reflect the date on which they received either of those decisions. On remand, the ALJ should inquire as to when, if ever, claimant received each of the two administrative decisions, how claimant found out about the decisions if they never received copies of them, and what led claimant to file the requests for hearing on January 4, 2022.

Additionally, in response to the question asking what evidence they have to show that they filed timely requests for hearings, claimant indicated on the questionnaire response that they spoke to representatives of the Department “several times” and believed that it should “all be documented.” EAB Exhibit 1 at 1. On remand, the ALJ should ask the Department’s witness whether the Department’s records show that claimant had any contact with the Department on or prior to the timely appeal deadlines for each administrative decision and, if so, whether those communications should have been construed as requests for hearing on the respective decisions.

Finally, claimant indicated on their questionnaire response that they had moved several times in the last ten months, that they helped their daughter move several times as well, and that their daughter “has been suffering as a victim of DV with her two babies at home.” EAB Exhibit 1 at 2. On remand, the ALJ should develop the record to show whether claimant’s daughter being the victim of domestic violence,

¹ Claimant filed a single response to the appellant questionnaire for both administrative decisions at issue.

and any help that claimant was required to render as a result, led claimant to file the requests for hearing late.

Orders No. 22-UI-189583 and 22-UI-189560 therefore are reversed, and these matters remanded for a hearing on whether claimant's late requests for hearing should be allowed and, if so, the merits of decisions # 145146 and 162500.

DECISION: Orders No. 22-UI-189583 and 22-UI-189560 are set aside, and these matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 17, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-189583 and 22-UI-189560 or return these matter to EAB. Only timely application for review of the subsequent orders 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

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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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