

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0702

Reversed & Remanded

PROCEDURAL HISTORY: On November 5, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for Riverside Golf & Country Club without good cause and was disqualified from receiving unemployment insurance benefits effective February 9, 2020 (decision # 70136). Also on November 5, 2020, the Department served notice of an administrative decision concluding that claimant voluntarily quit working for Chefs Table Catering LLC without good cause and was disqualified from receiving benefits effective February 2, 2020 (decision # 70857). On November 25, 2020, decisions # 70136 and 70857 became final without claimant having filed a request for hearing. On November 24, 2021, the Department served notice of an administrative decision, based in part on decisions # 70136 and 70857, assessing an overpayment of \$3,760.00 in regular unemployment insurance benefits, and \$6,000.00 in Federal Pandemic Unemployment Compensation benefits (FPUC) (decision # 82042). On December 14, 2021, decision # 82042 became final with claimant having filed a request for hearing.

On December 28, 2021, claimant filed late requests for hearing on decisions # 70136, 70857, and 82042. ALJ Kangas considered claimant's requests, and on March 21, 2022 issued Orders No. 22-UI-189279, 22-UI-189291, and 22-UI-189292, dismissing the requests for hearing on decisions # 70136, 70857, and 82042 as late, subject to claimant's right to renew the requests by responding to appellant questionnaires by April 4, 2022. On April 5, 2022, claimant filed late responses to the appellant questionnaires and timely applications for review of Orders No. 22-UI-189279, 22-UI-189291, and 22-UI-189292 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 questionnaires were late, they would not be considered, other orders would not be issued, and Orders No. 22-UI-189279, 22-UI-189291, and 22-UI-189292 remained in effect. These matters come before EAB based on claimant's April 5, 2022 applications for review of Orders No. 22-UI-189279, 22-UI-189291, and 22-UI-189292.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-189279, 22-UI-189291, and 22-UI-189292. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2022-EAB-0700, 2022-EAB-0701, and 2022-EAB-0702).

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 responses to the appellant questionnaires they filed with their applications for review of Orders No. 22-UI-189279, 22-UI-189291, and 22-UI-189292. These items have been marked as EAB Exhibit 1, EAB Exhibit 2, and EAB Exhibit 3, and copies provided to the parties with this decision. Any party that objects to our admitting the exhibits 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) On November 5, 2020, the Department mailed decision # 70136 to claimant's address of record on file with the Department, which was an address in Pennsylvania. The decision stated, in relevant part, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by no later than November 25, 2021." Order No. 22-UI-189279 Exhibit 1 at 2.

(2) On November 5, 2020, the Department mailed decision # 70857 to claimant's address of record on file with the Department, which was an address in Pennsylvania. The decision stated, in relevant part, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by no later than November 25, 2021." Order No. 22-UI-189291 Exhibit 1 at 2.

(3) Claimant did not receive either decision # 70136 or decision # 70857 in the mail. EAB Exhibit 1 at 2; EAB Exhibit 2 at 2.

(4) On November 24, 2021, the Department mailed decision # 82042 to claimant's address of record on file with the Department, which was an address in Pennsylvania. The decision stated, in relevant part, "you have the right to appeal this decision. Any appeal from this decision must be filed on or before December 14, 2021 to be timely." Order No. 22-UI-189292 Exhibit 1 at 3.

(5) On December 21, 2021, claimant received decision # 82042 in the mail. EAB Exhibit 3 at 2. Upon receiving decision # 82042 on December 21, 2021, claimant became aware of the existence of decisions # 70136 and 70857. EAB Exhibit 1 at 3, EAB Exhibit 2 at 3.

(6) On December 28, 2021 claimant filed requests for hearing on decisions # 70136, 70857, and 82042.

(7) At some point in time, claimant moved from their Pennsylvania address to an address in Virginia. EAB Exhibit 1 at 1; EAB Exhibit 2 at 1; EAB Exhibit 3 at 1.

CONCLUSIONS AND REASONS: Orders No. 22-UI-189279, 22-UI-189291, and 22-UI-189292 are reversed and the matters remanded for a hearing on whether claimant's late requests for hearing on decisions # 70136, 70857, and 82042 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. Under OAR 471-040-0010(1)(a)(A), good cause includes, “Failure to receive a document because the Employment Department or Office of Administrative hearings mailed it to an incorrect address despite having the correct address[.]” Under OAR 471-040-0010(1)(b)(A), good cause does not include, “Failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal[.]”

On November 5, 2020, the Department mailed decision # 70136 to claimant at claimant’s address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on decision # 70136 was November 5, 2020. Claimant did not file a request for hearing on decision # 70136 until December 28, 2021. Accordingly, claimant’s request for hearing on decision # 70136 was late.

Likewise, on November 5, 2020, the Department mailed decision # 70857 to claimant at claimant’s address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on decision # 70857 was November 5, 2020. Claimant did not file a request for hearing on decision # 70857 until December 28, 2021. Accordingly, claimant’s request for hearing on decision # 70857 was late.

Finally, on November 24, 2021, the Department mailed decision # 82042 to claimant at claimant’s address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on decision # 82042 was December 14, 2021. Claimant did not file a request for hearing on decision # 82042 until December 28, 2021. Accordingly, claimant’s request for hearing on decision # 82042 was late.

In their appellant questionnaire responses, claimant indicated that they did not receive decisions # 70136 or 70857, and did not receive decision # 82042 until December 21, 2021. EAB Exhibit 1 at 2; EAB Exhibit 2 at 2; EAB Exhibit 3 at 2. Claimant requested hearings for all three decisions on December 28, 2021. Claimant’s failure to receive the decisions timely, or at all, may have been a factor beyond their reasonable control that prevented them from filing timely requests for hearing. If so, that factor ceased to exist on December 21, 2021, when claimant received decision # 82042 and became aware of the existence of decisions # 70136 and 70857. If claimant’s failure to receive the administrative decisions in the mail amounted to good cause, claimant’s December 28, 2021 requests for hearing were filed within a “reasonable time,” given that December 28, 2021 is within seven days of December 21, 2021.

However, the record requires further development to determine whether claimant’s failure to receive decisions # 70136 and 70857 in the mail, and failure to receive decision # 82042 in the mail until December 21, 2021, constituted good cause. Good cause includes the failure to receive a document because the Department mailed it to an incorrect address despite having the correct address. However, good cause does not include the failure to receive a document due to not notifying the Department of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal. The record on review shows that decisions # 70136, 70857, and 82042 were mailed to claimant’s address in Pennsylvania. Order No. 22-UI-189279 Exhibit 1 at 1; Order No. 22-UI-189291 Exhibit 1 at 1; Order No. 22-UI-189292 Exhibit 1 at 1. However, claimant’s mailing address, as of the date they filed their April 5, 2022 applications for review, was in Virginia. EAB Exhibit 1 at 1; EAB Exhibit 2 at 1; EAB Exhibit 3 at 1.

On remand, the ALJ should ask questions to confirm that claimant failed to receive decisions # 70136 and 70857 in the mail and failed to receive decision # 82042 in the mail until December 21, 2021. The ALJ should then inquire whether claimant did not receive the administrative decisions because they failed to notify the Department of the Virginia address while claimant was claiming benefits or knew or should have known of a pending appeal. To this end, the ALJ should ask when claimant moved to Virginia. The ALJ should then ask whether claimant notified the Department of the updated address in Virginia, and if so, when. If claimant failed to notify the Department of the updated address, the ALJ should ask whether claimant was claiming benefits or otherwise had reason to know about a pending appeal at the time of the address change and failure to notify.

Orders No. 22-UI-189279, 22-UI-189291, and 22-UI-189292 therefore are reversed, and these matters remanded for hearings on whether claimant's late requests for hearing on decisions # 70136, 70857, and 82042 should be allowed and, if so, the merits of those decisions.

DECISION: Orders No. 22-UI-189279, 22-UI-189291, and 22-UI-189292 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: June 30, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-189279, 22-UI-189291, or 22-UI-189292 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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