

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0762

Reversed
Late Requests for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On June 17, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks from November 22, 2020 through January 16, 2021 (weeks 48-20 through 02-21) and therefore was ineligible to receive benefits for those weeks (decision # 100850). Also on June 17, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks from January 17 through February 6, 2021 (weeks 03-21 through 05-21) and therefore was ineligible to receive benefits for those weeks (decision # 101230). Also on June 17, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks from February 28 through April 24, 2021 (weeks 09-21 through 16-21) and therefore was ineligible to receive benefits for those weeks (decision # 101437). Also on June 17, 2021, the Department served notice of an administrative decision concluding that claimant filed a late claim for benefits for the week of May 16 through 22, 2021 (week 20-21) and therefore was ineligible to receive benefits for that week (decision # 101828). On July 7, 2021, decisions # 100850, 101230, 101437, and 101828 became final without claimant having filed a request for hearing. On December 27, 2021, claimant filed late requests for hearing on decisions # 100850, 101230, 101437, and 101828.

ALJ Kangas considered claimant's requests, and on March 15, 2022 issued Orders No. 22-UI-188649, 22-UI-188648, 22-UI-188650, and 22-UI-188647, dismissing claimant's requests for hearing on decisions # 100850, 101230, 101437, and 101828 as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by March 29, 2022. On March 22, 2022, claimant filed a timely response to the appellant questionnaire. On May 26, 2022, the Office of Administrative Hearings (OAH) mailed letters stating that Orders No. 22-UI-188649, 22-UI-188648, 22-UI-188650, and 22-UI-188647 were vacated and that a new hearing would be scheduled to determine if claimant's late requests for hearing should be allowed and, if so, the merits of decisions # 100850, 101230, 101437, and 101828.

On June 17, 2022, ALJ Kaneshiro conducted a hearing and issued Orders No. 22-UI-196457, 22-UI-196456, 22-UI-196458, and 22-UI-196455, dismissing as claimant's requests for hearing on decisions #

100850, 101230, 101437 and 101828 as late without good cause, leaving the administrative decisions undisturbed. On July 6, 2022, claimant filed applications for review on Orders No. 22-UI-196457, 22-UI-196456, 22-UI-196458, and 22-UI-196455 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-196457, 22-UI-196456, 22-UI-196458, and 22-UI-196455. For case-tracking purposes, this decision is being issued in quadruplicate (EAB Decisions 2022-EAB-0764, 2022-EAB-0763, 2022-EAB-0765, and 2022-EAB-0762).

FINDINGS OF FACT: (1) Claimant suffers from post-traumatic stress disorder (PTSD), clinical anxiety, and borderline personality disorder. Claimant's conditions have resulted in prior suicide attempts. The symptoms of claimant's conditions were exacerbated by the circumstances surrounding her employment relationship with, and separation from, her prior employer. Following that separation from work, and through at least June 17, 2022, claimant was involved in a lawsuit with her prior employer arising from that prior relationship.

(2) On June 17, 2021, the Department mailed decisions # 100850, 101230, 101437, and 101828 to claimant's address on file with the Department. Each 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 July 7, 2021." Order No. 22-UI-196457, Exhibit 1 at 2; Order No. 22-UI-196456, Exhibit 1 at 2; Order No. 22-UI-196458, Exhibit 1 at 2; Order No. 22-UI-196455, Exhibit 1 at 2.

(3) Claimant received the four administrative decisions prior to the July 7, 2021 appeal deadline. However, claimant was "very trigger[ed]" by her receipt of the administrative decisions because of her relationship to her prior employer and her feeling that the decisions served to "reopen the wound with [the employer] over and over again." Audio Record at 12:10; 14:16. Claimant suffered panic attacks and physical illness after receiving the administrative decisions, which made it difficult for claimant to "compartmentalize" all of the administrative decisions at one time and led her to "[break] down." Audio Record at 10:18; 13:37. In addition, at the time claimant received the administrative decisions, other unresolved eligibility issues involving her prior employer remained on her unemployment insurance claim. A hearing to address these issues was pending at the time. Claimant believed that the four administrative decisions would be addressed at that hearing.

(4) At some point after July 7, 2021, claimant appeared at the hearing on the other unresolved issues, and prevailed. Claimant received payment for some weeks of the weeks at issue in that matter.

(5) Between July 7, 2021 and December 27, 2021, claimant continued to experience physical difficulties, including panic attacks and vomiting, any time she tried to address paperwork related to her prior employer. Claimant attended outpatient therapy to treat her mental health conditions twice per month, and also attended support groups.

(6) Prior to December 27, 2021, claimant was prescribed medication which reduced her anxiety and allowed her to rationalize the administrative decisions. Claimant reviewed her paperwork including the

four administrative decisions and, with the assistance of her therapist, discovered there was a discrepancy.

(7) On December 27, 2021, claimant filed late requests for hearing on decisions # 100850, 101230, 101437, and 101828.

CONCLUSIONS AND REASONS: Orders No. 22-UI-196457, 22-UI-196456, 22-UI-196458, and 22-UI-196455 are set aside and these matters remanded for hearings on the merits of decisions # 100850, 101230, 101437, and 101828.

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. Not understanding the implications of a decision or notice when it is received does not constitute good cause to allow a late request for hearing. OAR 471-040-0010(1)(b)(B).

The orders under review concluded that claimant did not have good cause for her late requests for hearing because she testified that she did not understand that she could appeal each administrative decision before the other issues on her unemployment claim were resolved. Order No. 22-UI-196457 at 3; Order No. 22-UI-196456 at 3; Order No. 22-UI-196458 at 3; Order No. 22-UI-196455 at 3. As such, the orders concluded that claimant had not shown good cause for her late requests for hearing because, under OAR 471-040-0010(1)(b)(B), not understanding the implications of a decision or notice did not constitute good cause for filing a late request for hearing. Order No. 22-UI-196457 at 3; Order No. 22-UI-196456 at 3; Order No. 22-UI-196458 at 3; Order No. 22-UI-196455 at 3. The record does not support those conclusions.

The record shows that claimant suffers from PTSD, clinical anxiety, and borderline personality disorder. Furthermore, the record shows that, during her 20-day window for requesting a hearing on each of the administrative decisions, claimant was experiencing significant mental health related symptoms, untreated by medication, which were "triggered" by her receipt of the administrative decisions themselves. The preponderance of the evidence shows that these symptoms, which included panic attacks and physical illness, caused claimant to "[break] down" and thereby prevented claimant from being able to fully understand the information contained within the decisions, including the 20-day timeline for timely requesting a hearing. Furthermore, the record shows that the mental health effects claimant was experiencing, more likely than not, contributed to her misunderstanding that the four administrative decisions would be addressed at the pending hearing on claimant's other unresolved issues. Under those circumstances, the record establishes that claimant's mental health conditions, and the physical symptoms she was experiencing therefrom, were factors beyond her reasonable control that prevented her from timely filing her requests for hearing.

The record also shows that the mental health-related difficulties claimant was experiencing continued after the July 7, 2021 appeal deadline. Specifically, claimant continued to suffer from panic attacks and vomiting any time she tried to address paperwork related to her prior employer. Despite attending both outpatient therapy and support groups over the next several months, it was not until claimant was

prescribed medication prior to December 27, 2021 that her anxiety subsided. With the help of her therapist, claimant was at that point able to rationalize each of the administrative decisions, recognize discrepancies in those decisions, and subsequently file her late requests for hearings on December 27, 2021. The preponderance of evidence shows that the factor preventing claimant from timely filing her requests for hearing—her mental health conditions—ceased being a factor for purposes of OAR 471-040-0010 when claimant was prescribed medication shortly before December 27, 2021. Although it is not clear from the record the actual date claimant was prescribed this medication, the preponderance of evidence suggests that it occurred within seven days of December 27, 2021, the date that claimant filed her requests for hearing. As such, claimant filed her late requests for hearing within a reasonable time after the circumstances that prevented her timely filing had ceased to exist.

For the foregoing reasons, claimant has established good cause to extend the deadline to file her requests for hearing on decisions # 100850, 101230, 101437, and 101828 to December 27, 2021. Claimant's late requests for hearing therefore are allowed, and claimant is entitled to a hearing on the merits of each decision.

DECISION: Orders No. 22-UI-196457, 22-UI-196456, 22-UI-196458, and 22-UI-196455 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: August 3, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-196457, 22-UI-196456, 22-UI-196458, and 22-UI-196455 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these matters to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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 الإستئناف 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.