

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0783-R

Request for Reconsideration Allowed
Reversed & Remanded

PROCEDURAL HISTORY: On December 15, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully underreported earnings to obtain benefits and assessing a \$3,072 overpayment of regular unemployment insurance (regular UI) benefits, a \$3,600 overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits, a \$1,668 monetary penalty, and a 42-week penalty disqualification from future benefits. On January 4, 2022, the December 15, 2021 administrative decision became final without claimant having filed a request for hearing. On January 5, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on March 31, 2022 issued Order No. 22-UI-190163, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 14, 2022. On April 14, 2022, claimant filed a timely response to the appellant questionnaire. ALJ Kangas considered claimant's response, and on June 23, 2022 issued Order No. 22-UI-196759, re-dismissing claimant's request for hearing as late without good cause, and leaving the December 15, 2021 administrative decision undisturbed. On July 12, 2022, claimant filed an application for review of Order No. 22-UI-196759 with the Employment Appeals Board (EAB). On August 4, 2022, EAB issued EAB Decision 2022-EAB-0783, affirming Order No. 22-UI-196759. On August 4, 2022 and August 10, 2022, claimant filed timely requests for reconsideration of EAB Decision 2022-EAB-0783. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

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

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 August 10, 2022 request for reconsideration and additional evidence attached thereto, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. This evidence is necessary to complete

the record. 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.

FINDINGS OF FACT: (1) Claimant was born in Bhutan. Claimant's native languages are Dzongkha and Nepalese, and they have limited English proficiency. EAB Exhibit 1 at 21.

(2) On December 15, 2021, the Department mailed the December 15, 2021 administrative decision to claimant's address of record on file with the Department. The decision stated, in relevant part, "Any appeal from this decision must be filed on or before January 4, 2022 to be timely." Exhibit 1 at 1.

(3) Claimant received the December 15, 2021 administrative decision on December 22, 2021. Claimant did not understand the decision when they received it. EAB Exhibit 1 at 22. On or about December 29, 2021, claimant discussed the decision with their son and, with their son's assistance, gained an understanding of the decision. EAB Exhibit 1 at 23.

(4) On January 4, 2022, claimant called the Department and, with the help of their son who was not a professional interpreter, spoke with a Department representative. EAB Exhibit 1 at 23. Claimant believed they stated to the representative, with the help of their son, that they wanted to have a hearing on the December 15, 2021 administrative decision. EAB Exhibit 1 at 23. Claimant understood from the conversation that the representative wanted them to complete an online form to request a hearing on the December 15, 2021 administrative decision. EAB Exhibit 1 at 23.

(5) On January 5, 2022, claimant filed a late request for hearing on the December 15, 2021 decision. Claimant did not file the hearing request by the January 4, 2022 deadline because they did not understand from their conversation with the Department representative that they needed to file a request for hearing on January 4, 2022. EAB Exhibit 1 at 23. Additionally, claimant did not file their request for hearing by January 4, 2022 was because they "w[ere] busy with moving to [a] new location." Exhibit 3 at 2.

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is allowed. Order No. 22-UI-196759 is set aside and this matter remanded for a hearing on whether claimant's late request for hearing on the December 15, 2021 administrative decision should be allowed and, if so, the merits of that decision.

Request for Reconsideration. ORS 657.290(3) authorizes the Employment Appeals Board, upon its own motion or at the request of a party, to reconsider any previous decision of the Employment Appeals Board, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." "Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice." OAR 471-041-0145(1)(May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

On August 4, 2022 and August 10, 2022, claimant filed requests for reconsideration of EAB Decision 2022-EAB-0783. Claimant's requests for reconsideration were timely filed, and EAB finds that the making of a new decision is necessary and appropriate. Accordingly, claimant's request for reconsideration is allowed.

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.

On December 15, 2021, the Department mailed the December 15, 2021 administrative decision 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 that decision was January 4, 2022. Claimant did not file a request for hearing on the December 15, 2021 administrative decision until January 5, 2022. Accordingly, claimant's request for hearing was late.

In claimant's reconsideration request, claimant indicated that they did not understand English well, and that they believed they had stated (with the help of their son) during the January 4, 2022 conversation with the Department representative that they wanted to have a hearing on the December 15, 2021 administrative decision. EAB Exhibit 1 at 23. Claimant also indicated that they did not understand from their conversation with the Department representative that they needed to file a request for hearing on January 4, 2022. If difficulty with English prevented claimant from conveying to the Department their desire to appeal during the January 4, 2021 telephone conversation or prevented claimant from understanding that they needed to make a request by January 4, 2022 for the appeal to be timely, claimant's late request for hearing may have been due to factors beyond their reasonable control or an excusable mistake.

However, further inquiry is needed to determine whether claimant had good cause to file the late request for hearing, and whether they filed the late request for hearing within a reasonable time. On remand, the ALJ should develop the record to determine the extent of claimant's English proficiency, whether claimant could have requested Department documents be translated into Dzongkha or Nepalese, why claimant's son was not available to help claimant understand the administrative decision until on or about December 29, 2021, whether claimant's January 4, 2022 conversation with the Department representative was in English, and whether claimant could have requested a translator while speaking with the representative. The ALJ should also ask questions to clarify whether claimant in fact did request a hearing during the January 4, 2022 telephone conversation (which would have been a timely hearing request). If not, the ALJ should inquire about the extent to which claimant did not timely file the hearing request because they did not understand from their conversation with the Department representative that they needed to file a request by January 4, 2021, or whether claimant's late filing was primarily the result of their being busy moving at the time.

Order No. 22-UI-196759 therefore is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing should be allowed and, if so, the merits of the December 15, 2021 administrative decision.

DECISION: Claimant's request for reconsideration is allowed. Order No. 22-UI-196759 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: September 15, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-196759 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter 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 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.

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.