

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0860

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On October 30, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective May 5, 2019 (decision # 132659). On November 19, 2020, decision # 132659 became final without claimant having filed a request for hearing. On November 4, 2021, the Department served notice of an administrative decision, based in part on decision # 132659, concluding that claimant was paid unemployment insurance benefits to which they were not entitled and assessing an overpayment of \$1,998 in regular unemployment insurance benefits and \$5,400 in Federal Pandemic Unemployment Compensation benefits that claimant was required to repay to the Department (decision # 161325). On November 24, 2021, decision # 161325 became final without claimant having filed a request for hearing. On December 13, 2021, claimant filed late requests for hearing on decisions # 132659 and 161325.

ALJ Kangas considered claimant's requests. On April 18, 2022, ALJ Kangas issued Order No. 22-UI-191509, dismissing claimant's request for hearing on decision # 161325 as late and leaving that decision undisturbed, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 2, 2022. On April 19, 2022, ALJ Kangas issued Order No. 22-UI-191644, dismissing claimant's request for hearing on decision # 132659 as late and leaving that decision undisturbed, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 3, 2022. On May 9, 2022, claimant filed late responses to the appellant questionnaires and timely applications for review of Orders No. 22-UI-191509 and 22-UI-191644 with the Employment Appeals Board (EAB). On August 2, 2022, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire responses or issue additional orders regarding these matters because claimant's questionnaire responses were late. These matters come before EAB based upon claimant's May 9, 2022 applications for review of Orders No. 22-UI-191509 and 22-UI-191644.

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 and their supporting statement attached thereto, and has been 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.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-191509 and 22-UI-191644. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0860 and 2022-EAB-0861).

FINDINGS OF FACT: (1) On October 30, 2020, the Department mailed decision # 132659 to claimant's address on file with the Department. Decision # 132659 vacated and replaced decision # 100952, which had previously been issued by the Department on October 15, 2020.¹ Order No. 22-UI-191644, Exhibit 1 at 1. Decision # 132659 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 November 19, 2020." Order No. 22-UI-191644, Exhibit 1 at 2. Claimant received decision # 132659.

(2) On November 4, 2021, the Department mailed decision # 161325 to claimant's address on file with the Department. Decision # 161325 stated, "If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before November 24, 2021 to be timely." Order No. 22-UI-191509, EAB Exhibit 1 at 3. Claimant received decision # 161325.

CONCLUSIONS AND REASONS: Claimant's late requests for hearings on decisions # 132659 and 161325 are dismissed.

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 requests for hearing on decisions # 132659 and 161325 were due by November 19, 2020 and November 24, 2021, respectively. Because claimant did not file their requests for hearing until December 13, 2021, the requests were late.

In their appellant questionnaire response, claimant stated that they did not file their requests for hearing within the respective 20-day deadlines provided for in decisions # 132659 and 161325 because they were "confused" by the language contained within the decisions. EAB Exhibit 1 at 2. However, OAR 471-040-0010(1)(b)(B) provides that failing to understand the implications of a decision or notice when it is received does not constitute good cause for purposes of the rule. Furthermore, to the extent claimant stated that "confusion [with] the UI process" also contributed to their failure to timely file their requests

¹ Decision # 100952 was vacated and replaced by the Department to correct the effective date of the denial. EAB has taken notice of this fact, which is 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 fact will remain in the record.

for hearing, claimant's generalized assertion, without more, is insufficient to show that circumstances beyond their reasonable control or an excusable mistake prevented them from meeting the deadline. EAB Exhibit 1 at 2. This conclusion is supported by claimant's acknowledgement that they "could have looked into [the decisions] more completely in a timely fashion," and that their failure to do so was due to "unreasonable thinking on [their] part." EAB Exhibit 1 at 2.

Under the totality of these circumstances, claimant has failed to show that factors beyond their reasonable control or an excusable mistake prevented them from timely filing requests for hearing related to decisions # 132659 and 161325. As such, claimant has failed to show good cause to extend the timely filing deadline with respect to either administrative decision. Therefore, claimant's requests for hearing on decisions # 132659 and 161325 are subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Orders No. 22-UI-191509 and 22-UI-191644 are affirmed.

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

DATE of Service: August 12, 2022

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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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 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.

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