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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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<p>EMPLOYMENT APPEALS BOARD DECISION 2022-EAB-0923</p>
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Reversed & Remanded

PROCEDURAL HISTORY: On November 12, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective April 26, 2020 (decision # 91505). On December 2, 2020, decision # 91505 became final without claimant having filed a request for hearing. On December 20, 2021, the Department served notice of an administrative decision concluding that claimant was overpaid \$900 in Lost Wage Assistance (LWA) benefits that she must repay (decision # 0565501). On January 10, 2022, decision # 0565501 became final without claimant having filed a request for a hearing. On February 7, 2022, the Department served notice of an administrative decision denying claimant's request for waiver of the \$900 LWA overpayment (decision # 71351). On February 28, 2022, decision # 71351 became final without claimant having filed a request for hearing.

On April 16, 2022, claimant filed late requests for hearing on administrative decisions # 91505, 0565501, and 71351. ALJ Kangas considered the requests, and on July 19, 2022 issued Orders No. 22-UI-198551, 22-UI-198560, and 22-UI-198552, dismissing the requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by August 2, 2022. On August 5, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Orders No. 22-UI-198551, 22-UI-198560, and 22-UI-198552 with the Employment Appeals Board (EAB). On September 6, 2022, ALJ Kangas mailed letters to claimant stating that because claimant's response to the appellant questionnaire was late, it would not be considered, other orders would not be issued, and Orders No. 22-UI-198551, 22-UI-198560, and 22-UI-198552 remained in effect. This matter comes before EAB based on claimant's August 5, 2022 application for review of 22-UI-198551, 22-UI-198560, and 22-UI-198552.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-198551, 22-UI-198560, and 22-UI-198552. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2022-EAB-0925, 2022-EAB-0923, and 2022-EAB-0924).

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 response to the appellant questionnaire claimant included with her application for review, 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(s) will remain in the record.

FINDINGS OF FACT: (1) On November 12, 2020, the Department mailed administrative decision # 91505 to claimant’s address on file with the Department. The administrative 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 December 2, 2020.” Exhibit 1 at 2.

(2) On December 20, 2021, the Department mailed administrative decision # 0565501 to claimant’s address on file with the Department. The administrative decision stated, “You have the right to appeal this decision if you believe it is wrong. Your request for appeal must be received no later than January 10, 2022. Exhibit 1 at 1.

(3) On February 7, 2022, the Department mailed administrative decision # 71351 to claimant’s address on file with the Department. The administrative decision stated, “Any appeal from this decision must be filed on or before February 28, 2022 to be timely.” Exhibit 1 at 2.

CONCLUSIONS AND REASONS: Orders No. 22-UI-198551, 22-UI-198560, and 22-UI-198552 are set aside and this matter remanded for a hearing on whether claimant’s late requests for hearing on administrative decisions # 91505, 0565501, and 71351 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.

Claimant’s request for hearing on decision # 91505 was due by December 2, 2020. Her request for hearing on decision # 0565501 was due by January 10, 2022. Her request for hearing on decision # 71351 was due by February 28, 2022. Because claimant did not file her requests for hearing until April 16, 2022, the requests were late. In claimant’s response to the appellant questionnaire, claimant asserts that she “did not receive any hearing information until April of 2022.” EAB Exhibit 1 at 1. This statement indicates that claimant’s failure to file timely requests for hearing on the administrative decisions at issue may have been due to factors beyond claimant’s reasonable control or an excusable mistake. Further, because claimant filed her requests for hearing on April 16, 2022, she may have filed her late requests for hearing within a reasonable time after any circumstances that may have prevented a timely filing ceased to exist.

Because further development of the record is necessary for a determination of whether claimant's late requests for hearing should be allowed, and if so, the merits of administrative decisions # 91505, 0565501, and 71351, Orders No. 22-UI-198551, 22-UI-198560, and 22-UI-198552 are reversed, and these matters are remanded.

DECISION: Orders No. 22-UI-198551, 22-UI-198560, and 22-UI-198552 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: September 22, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-198551, 22-UI-198560, or 22-UI-198552, or return these matters to EAB. Only timely applications 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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