

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0936

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On July 12, 2010, 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 February 7, 2010 (decision # 141353). On August 2, 2010, decision # 141353 became final without claimant having filed a request for hearing. On June 16, 2011, the Department served notice of an administrative decision, based in part on decision # 141353, concluding that claimant willfully failed to disclose a material fact and was overpaid \$5,030.00 in regular unemployment insurance (regular UI) benefits that they must repay, and assessing a \$754.50 monetary penalty and a 48-week penalty disqualification. On July 6, 2011, the June 16, 2011 administrative decision became final without claimant having filed a request for hearing.

On February 21, 2022, claimant filed late requests for hearing on decision # 141353 and the June 16, 2011 administrative decision. ALJ Kangas considered claimant's requests, and on August 1, 2022 issued Orders No. 22-UI-199453 and 22-UI-199454, dismissing the requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by August 15, 2022. On August 17, 2022, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 22-UI-199453 and 22-UI-199454 with the Employment Appeals Board (EAB). On September 14, 2022, ALJ Kangas mailed a letters to claimant stating that because claimant's response to the appellant questionnaire was late, it would not be considered, and Orders No. 22-UI-199453 and 22-UI-199454 remained in effect.

These matters come before EAB based upon claimant's August 17, 2022 applications for review of Orders No. 22-UI-199453 and 22-UI-199454. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-199453 and 22-UI-199454. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0937 and 2022-EAB-0936).

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, 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.

CONCLUSIONS AND REASONS: Orders No. 22-UI-199453 and 22-UI-199454 are set aside and the matters remanded for a hearing on whether claimant's late requests for hearing on decision # 141353 and the June 16, 2011 administrative decision 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.

On July 12, 2010, the Department mailed decision # 141353 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 August 2, 2010. Claimant did not file a request for hearing on decision # 141353 until February 21, 2022. Accordingly, claimant's request for hearing on decision # 141353 was late.

On June 16, 2011 the Department mailed the June 16, 2011 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 July 6, 2011. Claimant did not file a request for hearing on decision the June 16, 2011 administrative decision until February 21, 2022. Accordingly, claimant's request for hearing on June 16, 2011 administrative decision was late.

In their appellant questionnaire response, claimant indicated that they were incarcerated from June 25, 2010 through July 3, 2020 and did not receive decision # 141353 or the June 16, 2011 administrative decision when they were mailed. EAB Exhibit 1 at 1, 2. Claimant further stated that what prompted them to file their appeals on February 21, 2022 was that claimant received a statement of charges from the Department. EAB Exhibit 1 at 1. If claimant did not receive the administrative decisions due to being incarcerated, claimant's late requests for hearing may have been due to factors beyond their reasonable control. However, further inquiry is needed to determine whether claimant had good cause to file the late requests for hearing, and whether they filed the late requests for hearing within a reasonable time.

On remand, the ALJ should ask questions to confirm that claimant failed to receive the decisions due to incarceration. The ALJ should also ask questions to confirm when claimant learned of the existence of decision # 141353 and the June 16, 2011 administrative decision, including whether they may have learned of the decisions after their July 3, 2020 release from incarceration. Further, the ALJ should ask questions to determine when any other factors that may have prevented a timely filing ceased to exist,

and, if so, whether claimant's February 21, 2022 requests for hearing were filed within a seven-day "reasonable time" thereafter.

Orders No. 22-UI-199453 and 22-UI-199454 therefore are reversed, and the matters remanded for a hearing on whether claimant's late requests for hearing on decision # 141353 and the June 16, 2011 administrative decision should be allowed and, if so, the merits of those decisions.

DECISION: Orders No. 22-UI-199453 and 22-UI-199454 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 29, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate either Order No. 22-UI-199453 or 22-UI-199454 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 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 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
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