

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1009

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On October 13, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective July 28, 2019 (decision # 94742). On November 2, 2020, decision # 94742 became final without claimant having filed a request for hearing. On December 9, 2021, the Department served notice of an administrative decision, based in part on decision # 94742, concluding that claimant received benefits to which they were not entitled and assessing an overpayment of \$1,800 in Lost Wages Assistance (LWA) benefits that claimant was required to repay to the Department (decision # 0560885). On December 29, 2021, decision # 0560885 became final without claimant having filed a request for hearing. On February 28, 2022, the Department served notice of an administrative decision denying claimant's request for a waiver of the overpayment assessed by decision # 0560885 (decision # 83944). On March 21, 2022, decision # 83944 became final without claimant having filed a request for hearing. On April 6, 2022, claimant filed late requests for hearing on decisions # 94742, 0560885, and 83944.

ALJ Kangas considered claimant's requests, and on July 29, 2022 issued Orders No. 22-UI-199407, 22-UI-199405, and 22-UI-199406, dismissing claimant's requests for hearing on decisions # 94742, 0560885, and 83944, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by August 12, 2022. On August 18, 2022, claimant filed a late response to the appellant questionnaire and timely application for review of Orders No. 22-UI-199407, 22-UI-199405, and 22-UI-199406 with the Employment Appeals Board (EAB). On October 3, 2022, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue additional orders regarding these matters because the questionnaire response was late. These matters come before EAB based upon claimant's August 18, 2022 applications for review of Orders No. 22-UI-199407, 22-UI-199405, and 22-UI-199406.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-199407, 22-UI-199405, and 22-UI-199406. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2022-EAB-1011, 2022-EAB-1009, and 2022-EAB-1010).

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 a statement attached thereto, 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.

CONCLUSIONS AND REASONS: Orders No. 22-UI-199407, 22-UI-199405, and 22-UI-199406 are set aside and these matters remanded for hearings on whether claimant’s late requests for hearing on decisions # 94742, 0560885, and 83944 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.

The requests for hearing on decisions # 94742, 0560885, and 83944 were due on November 2, 2020, December 29, 2021, and March 21, 2022, respectively. Because claimant did not file their requests for hearing until April 6, 2022, the requests were late. On the statement attached to their appellant questionnaire response, claimant stated that they “first found out about the state repayment of ~ \$20,572. . . on or around April 5, 2022”¹ when they were speaking to a Department representative “about the \$1,800 Federal repayment[.]” EAB Exhibit 1 at 3. Claimant also indicated that they did not file their hearing request prior to the timely filing deadline because they were “not aware of this deadline.” EAB Exhibit 1 at 3.

It is not clear from claimant’s responses when, if at all, they received or otherwise became aware of decisions # 94742, 0560885, and 83944, and claimant’s statement that they were “not aware of” the deadline listed in the appellant questionnaire response suggests that they may not have received one or more of these administrative decisions. If claimant did not receive, or otherwise become aware of, one or more of the administrative decisions, they may have filed late requests for hearing on the decisions due to factors beyond their reasonable control. However, further information is necessary to determine whether claimant had good cause to file the late requests for hearing.

On remand, the ALJ should inquire as to when, if at all, claimant received or otherwise became aware of each of the three administrative decisions. Further, if claimant was in receipt of, or otherwise aware of,

¹ Claimant appears to be referring here to a different administrative decision, the appeal of which is not currently before EAB.

any of those decisions prior to their timely filing deadlines, the ALJ should inquire as to what factors prevented claimant from filing timely requests for hearing, as well as when those factors ceased to exist. The ALJ should also ask questions to develop the record as to whether claimant's April 6, 2022 requests for hearing were filed within a seven-day "reasonable time" after the factors that prevented a timely filing (if any) ceased to exist.

Orders No. 22-UI-199407, 22-UI-199405, and 22-UI-199406 are therefore reversed, and these matters remanded for hearings on whether claimant's late requests for hearing on decisions # 94742, 0560885, and 83944 should be allowed and, if so, the merits of those decisions.

DECISION: Orders No. 22-UI-199407, 22-UI-199405, and 22-UI-199406 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: October 25, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-199407, 22-UI-199405, and 22-UI-199406 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.

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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