

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1033

Reversed and Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On January 22, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able, available and actively seeking work from May 31, 2020 through January 16, 2021, and therefore was ineligible for unemployment insurance benefits for that period and until the reason for the denial had ended (decision # 90427). On February 11, 2021, decision # 90427 became final without claimant having filed a request for hearing. On March 30, 2022, the Department served notice of an administrative decision concluding that claimant was overpaid \$13,865 in unemployment insurance and Federal Pandemic Unemployment Compensation benefits that claimant was required to repay the Department (decision # 163942). On April 19, 2022, decision # 163942 became final without claimant having filed a timely request for hearing.

On May 25, 2022, claimant filed late a late request for hearings on decisions # 90427 and 163942. ALJ Kangas considered claimant's request, and on September 8, 2022 issued Order Nos. 22-UI-202267 and 22-UI-202266, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 22, 2022. On September 28, 2022, claimant filed a late response to the appellant questionnaire and a timely application for reviews of Order Nos. 22-UI-202267 and 22-UI-202266 with the Employment Appeals Board (EAB). On October 3, 2022, ALJ Kangas mailed letters stating that because claimant's response to the appellant questionnaire was late, it would not be considered, another order would not be issued, and Order Nos. 22-UI-202267 and 22-UI-202266 remained in effect. This matter comes before EAB based on claimant's September 28, 2022 application for reviews of Order Nos. 22-UI-202267 and 22-UI-202266.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its reviews of Orders No. 22-UI-202267 and 22-UI-202266. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-1032 and 2022-EAB-1033).

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 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.

CONCLUSIONS AND REASONS: Order Nos. 22-UI-202267 and 22-UI-202266 are set aside and these matters remanded for hearings on whether claimant's late request for hearings on decisions # 90427 and 163942 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.

A request for hearings on decisions # 90427 and 163942 were due on February 11, 2021 and April 19, 2022, respectively. Because claimant did not file her request for hearings until May 25, 2022, the request was late. In her appellant questionnaire response, claimant stated that she first learned of the administrative decision on May 20, 2022, and then filed her hearing request on May 25, 2022. As a preliminary matter, it is unclear whether claimant received both decisions # 90427 and 163942 on May 20, 2022, or if her response refers to only one of the administrative decisions. EAB Exhibit 1 at 1. Claimant indicates she was moving and stayed "place to place" since October 2021. Claimant stated she used her mother-in-law's address, because she "did not have my own." Claimant further indicates that she updated her address "3 months ago." EAB Exhibit 1 at 2.

If claimant did not receive, or otherwise become aware of, one or more of the administrative decisions until May 20, 2022, she may have filed a late request for hearings on the decisions due to factors beyond her reasonable control. However, further information is necessary to determine whether claimant had good cause to file the late request for hearings. On remand, the ALJ should inquire as to when claimant moved to North Carolina, when claimant updated her address with the Department, and what efforts claimant made with her mother-in-law, if any, to receive her mail while she was between mailing addresses. The record should further be developed as to what claimant's address was at the time administrative decision # 90427 was mailed, since that administrative decision was mailed in January 2021, and claimant stated she did not move and begin staying "place to place" until October 2021.

The record should also be developed to determine when claimant learned of the existence of decisions # 90427 and 163942, and whether claimant filed her request for hearings within seven days of that point in time. If it is determined on remand that claimant's late request for hearing(s) should be allowed, inquiry will then be necessary to address the merits of decision # 90427 and/or 163942.

Order Nos. 22-UI-202267 and 22-UI-202266 therefore are reversed, and these matters remanded for a hearing on whether claimant's late request for hearings on decisions # 90427 and 163942 should be allowed and, if so, the merits of those decisions.

DECISION: Order Nos. 22-UI-202267 and 22-UI-202266 are 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: November 8, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-202267 and 22-UI-202266 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 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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