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

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EMPLOYMENT APPEALS BOARD DECISION

2022-EAB-1087

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On March 2, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation of material fact to obtain benefits and assessing an overpayment of \$5,804 in regular unemployment insurance (regular UI) benefits, \$2,756 in Pandemic Emergency Unemployment Compensation (PEUC) benefits, \$9,600 in Federal Pandemic Unemployment Compensation (FPUC) benefits, \$1,800 in Lost Wages Assistance (LWA) benefits, a \$5,448 monetary penalty, and a 52-week penalty disqualification from future benefits. On March 22, 2022, the March 2, 2022 administrative decision became final without claimant having filed a request for hearing. On March 31, 2022, claimant filed a late request for hearing. On October 20, 2022, ALJ Lucas conducted a hearing, and on October 21, 2022 issued Order No. 22-UI-205697, dismissing claimant's request for hearing as late without good cause and leaving the March 2, 2022 administrative decision undisturbed. On October 28, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant was an intellectually disabled person.

(2) Prior to January 2022, claimant received mail via a P.O. Box address in Vancouver, Washington. The P.O. Box address was the address of record the Department had in its records for claimant.

(3) In January 2022, claimant moved to a street address in Vancouver and began receiving his mail there. Claimant did not update his address information with the Department.

(4) On February 1, 2022, the Department mailed an overpayment administrative decision to claimant's P.O. Box address. Claimant still checked his P.O. Box occasionally because it was not set to expire until May 2022. At some point after the February 1, 2022 administrative decision was issued, claimant checked his P.O. Box and became aware of the February 1, 2022 administrative decision.

(5) On March 2, 2022, the Department mailed the March 2, 2022 administrative decision to claimant's P.O. Box address because it was claimant's address on file with the Department. The March 2, 2022 administrative decision was a decision that amended the February 1, 2022 administrative decision. The March 2, 2022 administrative decision stated, "Any appeal from this decision must be filed on or before March 22, 2022 to be timely." Exhibit 1 at 1.

(6) Claimant did not receive the March 2, 2022 administrative decision because it was mailed to his P.O. Box address rather than to his street address. Although claimant's P.O. Box was accessible to him, he did not check it and therefore was unaware of the March 2, 2022 administrative decision.

(7) After claimant became aware of the February 1, 2022 administrative decision, he made efforts to appeal it. He called the Department multiple times requesting assistance with the appeal and advising that he needed accommodations due to his intellectual disabilities. On March 31, 2022, claimant

obtained help from a third party assistant. The assistant accessed a ContactUs form on claimant's behalf, and filled out a request for hearing for claimant, which was intended to relate to the February 1, 2022 administrative decision. *See* Exhibit 2 at 1. The Department received the request and treated it as a request for hearing on the March 2, 2022 administrative decision.

(8) In May 2022, claimant's P.O. Box expired and he lost access to it.

CONCLUSIONS AND REASONS: Order No. 22-UI-205697 is reversed, claimant's late request for hearing is allowed, and a hearing on the merits of the March 2, 2022 administrative decision is required.

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 March 2, 2022, the Department mailed the March 2, 2022 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 March 22, 2022. Claimant did not file a request for hearing on the March 2, 2022 administrative decision until March 31, 2022. Accordingly, claimant's request for hearing was late.

The record shows that claimant did not receive the March 2, 2022 administrative decision because the Department mailed it to his P.O. Box address rather than his street address. As a result, claimant was not aware of the existence of the March 2, 2022 administrative decision or of his right to appeal the decision. The March 2, 2022 administrative decision was accessible to claimant because it was mailed to his P.O. Box address, which claimant continued to have access to until May 2022. Nevertheless, in light of claimant's intellectual disabilities, the fact that the March 2, 2022 administrative decision was not mailed to claimant's street address was a factor beyond his reasonable control that prevented him from filing an appeal in a timely manner. That factor ceased on March 31, 2022, when, with the help of a third party assistant, claimant successfully filed a request for hearing that was intended to relate to the February 1, 2022 administrative decision, but was treated as a request for hearing on the March 2, 2022 administrative decision. Thus, claimant filed a request for hearing on the same day that the factor beyond his reasonable control ceased to exist and therefore claimant filed his appeal within a seven-day reasonable time after the factor that prevented a timely filing ceased.

Accordingly, claimant established good cause to extend the deadline to file a request for hearing on the March 2, 2022 administrative decision a reasonable time to March 31, 2022. Claimant's late request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of the March 2, 2022 administrative decision.

DECISION: Order No. 22-UI-205697 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Serres and D. Hettle;

A. Steger-Bentz, not participating.

DATE of Service: January 6, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-205697 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter 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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