

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1205

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On September 30, 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 March 1, 2020 (decision # 71047). On October 20, 2020, decision # 71047 became final without claimant having filed a request for hearing. On March 1, 2022, the Department served notice of an administrative decision, based in part upon decision # 71047, concluding that claimant received benefits to which they were not entitled, and assessing an overpayment of \$5,984 in regular unemployment insurance (regular UI) and \$9,600 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 131156). On March 21, 2022, decision # 131156 became final without claimant having filed a request for hearing. On March 31, 2022, claimant filed late requests for hearing on decisions # 71047 and 131156.

ALJ Kangas considered claimant's requests, and on July 6, 2022 issued Orders No. 22-UI-197571 and 22-UI-197568, dismissing claimant's requests for hearing on decisions # 71047 and 131156, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by July 20, 2022. On July 26, 2022, claimant filed timely applications for review of Orders No. 22-UI-197571 and 22-UI-197568 with the Employment Appeals Board (EAB), which were construed as responses to the appellant questionnaire. On December 1, 2022, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire responses or issue another order regarding these matters because the questionnaire responses were late. These matters comes before EAB based upon claimant's July 26, 2022 applications for review of Orders No. 22-UI-197571 and 22-UI-197568.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-197571 and 22-UI-197568. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-1203 and 2022-EAB-1205).

FINDINGS OF FACT: (1) On September 30, 2020, the Department mailed decision # 71047 to claimant's address on file with the Department. Decision # 71047 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 October 20, 2020." Order No. 22-UI-197571, Exhibit 1 at 2.

(2) On March 1, 2022, the Department mailed decision # 131156 to claimant's address on file with the Department. Decision # 131156 stated, "If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before March 21, 2022 to be timely." Order No. 22-UI-197568, Exhibit 1 at 2.

CONCLUSIONS AND REASONS: Claimant's late requests for hearing are dismissed.

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 # 71047 and 131156 were due by October 20, 2020 and March 21, 2022, respectively. Because claimant did not file their requests for hearing until March 31, 2022, the requests were late. On their requests for hearing, claimant stated that they "never received documentation about [decision # 71047] being made." Order No. 22-UI-197571, Exhibit 2 at 2. If claimant never received decision # 71047, they may have failed to file a timely request for hearing due to factors beyond their reasonable control. However, claimant did not explain how or when they first learned of that decision, or why they filed their request for hearing on that decision when they did. Claimant provided no information regarding why they failed to file a timely request for hearing on decision # 131156.

Further, claimant was given another opportunity to explain these circumstances by responding to the appellant questionnaire, but did not do so. Orders No. 22-UI-197571 and 22-UI-197568, which dismissed claimant's late requests for hearing with the right to renew and were mailed to claimant on July 6, 2022, each included appellant questionnaires which asked claimant when they received the administrative decision in each case, when they filed their request for hearing, how they filed it, and other questions which would have allowed claimant to demonstrate whether they had good cause to file the late requests for hearing and whether they filed within a reasonable time after those factors ceased to exist. Order No. 22-UI-197571 at 4-5; Order No. 22-UI-197568 at 4-5. Both orders also indicated on their certificates of mailing that claimant's responses to the questionnaires were due by July 20, 2022. Despite this, claimant did not respond to the appellant questionnaires or otherwise offer additional information to explain why they filed the late requests for hearing.

For the above reasons, claimant has not demonstrated that they had good cause to file the late requests for hearing. Therefore, claimant's late requests for hearing on decisions # 71047 and 131156 are subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Orders No. 22-UI-197571 and 22-UI-197568 are affirmed.

D. Hettle and A. Steger-Bentz;
S. Serres, not participating.

DATE of Service: December 14, 2022

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

NOTE: The Department may defer recovery or completely waive the overpaid amount if certain standards are met. To make a request for Waiver of Overpayment Recovery, call 503-947-1995 or email OED_Overpayment_unit@employ.oregon.gov . You must submit waiver applications that correspond to the program for which you were overpaid benefits. **If you were overpaid benefits under both state and federal benefits programs, you will need to file two separate waiver applications.** To access a State UI Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “State UI Overpayment Waiver”. To access a Federal Program Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “Federal Program Overpayment Waiver”.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.