

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0028

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On March 8, 2021, 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 May 31, 2020 (decision # 74812). On March 29, 2021, decision # 74812 became final without claimant having filed a request for hearing. On July 21, 2022, claimant filed a late request for hearing on decision # 74812. On December 13, 2022, ALJ Chiller conducted a hearing at which the employer failed to appear, and on December 20, 2022 issued Order No. 22-UI-210400, dismissing claimant's late request for hearing and leaving decision # 74812 undisturbed. On December 28, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted three written arguments, dated January 4, 2023, January 16, 2023, and January 23, 2023. EAB did not consider claimant's January 4, 2023 written argument when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Additionally, all three arguments contained information that was not part of the hearing record, and claimant did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing or that the information was relevant and material to EAB's determination. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's January 16, 2023 and January 23, 2023 argument to the extent it was based on the record.

The parties may offer new information, such as the additional information attached to claimant's written arguments, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) On April 1, 2020, claimant filed an initial claim for unemployment insurance benefits. Thereafter, claimant claimed weekly benefits starting from May 2020 to September 2020 and again from November 2020 until December 2020. Prior to the issuance of decision # 74812, claimant last filed a claim for weekly benefits on December 14, 2020.¹ At the time he was claiming benefits in 2020, claimant's address listed with the Department was on Northeast 66th Avenue in Portland, Oregon.

(2) In February 2021, claimant moved to an address on Northeast Ainsworth Street in Portland, Oregon. He did not update his address with the Department at that time, as he had stopped claiming benefits and therefore did not believe it was important to do so. Afterwards, claimant relied on his former landlady to forward mail to him, which she did intermittently.

(3) On March 8, 2021, the Department mailed decision # 74812 to claimant's address on file with the Department. Decision # 74812 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 March 29, 2021." Exhibit 1 at 2. Claimant never received a copy of decision # 74812 because it was mailed to his previous address.

(4) On March 19, 2021, claimant contacted the Department by phone to restart his claim and file additional weekly claims. Claimant and the Department representative did not discuss decision # 74812 or the matter it addressed during that phone call.

(5) On July 15, 2022, the Department served notice of an administrative decision, based in part on decision # 74812, concluding that claimant received benefits to which he was not entitled, and assessing an overpayment of \$751 in combined regular unemployment insurance (regular UI) and Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 135823).²

(6) When claimant received decision # 135823 in the mail, he first became aware of the existence of decision # 74812. On July 21, 2022, claimant filed a request for hearing on decision # 74812.

CONCLUSIONS AND REASONS: Order No. 22-UI-210400 is reversed and this matter remanded for a hearing on the merits of decision # 74812.

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

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

² EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

to exist. Under OAR 471-040-0010(1)(b)(A), “good cause” for filing a late request for hearing does not include failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal.

The request for hearing on decision # 74812 was due by March 29, 2021. Because claimant did not file his request for hearing until July 21, 2022, the request was late. The order under review concluded that claimant did not have good cause to file the late request for hearing under OAR 471-040-0010(1)(b)(A) because claimant “did not provide the Employment Department with his most recent mailing address, though it was within his reasonable control to do so.” Order No. 22-UI-210400 at 3. The record does not support this conclusion.

The record shows that claimant’s failure to file a timely request for hearing was due to his failure to update his address with the Department, which resulted in his failure to receive a copy of decision # 74812. However, for OAR 471-040-0010(1)(b)(A) to apply, claimant must also have either been claiming benefits at the time that the administrative decision was issued or have known or have had reason to know about a pending appeal. Claimant was not claiming benefits at the time that the Department issued decision # 74812 in March 2021, as he had stopped filing weekly claims in December 2020. The record does not show that claimant either knew or had reason to know of a pending appeal in March 2021. Therefore, OAR 471-040-0010(1)(b)(A) is inapplicable to claimant’s circumstances.

Further, because claimant never received a copy of decision # 74812, he failed to file a timely request for hearing due to factors beyond his control. Those factors ceased when claimant received the overpayment decision (# 135823) on or shortly after July 15, 2022 and learned that the Department had previously disqualified him from receiving benefits. Claimant filed his request for hearing on July 21, 2022, which was less than seven days after the factors beyond his control ceased. Claimant therefore had good cause to file the late request for hearing, and filed his request for hearing within a reasonable time.

Claimant’s late request for hearing on decision # 74812 therefore is allowed, and claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 22-UI-210400 is 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: February 10, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-210400 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 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.

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