

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0048

Reversed & Remanded

PROCEDURAL HISTORY: On October 28, 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 November 24, 2019 (decision # 135030). On November 17, 2020, decision # 135030 became final without claimant having filed a request for hearing. On July 25, 2022, claimant filed a late request for hearing on decision # 135030.

On December 12, 2022, ALJ Enyinnaya held a hearing at which the employer failed to appear, and on December 19, 2022 issued Order No. 22-UI-210272, concluding that claimant did not have good cause to file the late request for hearing, and leaving decision # 135030 undisturbed. On January 4, 2023, claimant filed a timely application for review of Order No. 22-UI-210272 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On October 28, 2020, the Department mailed decision # 135030 to claimant's address on file with the Department. Decision # 135030 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 November 17, 2020." Exhibit 1 at 6.

(2) On November 17, 2020, decision # 135030 became final without claimant having filed a request for hearing.

(3) On July 5, 2022, the Department served notice of an administrative decision, apparently based in part on decision # 135030, concluding that claimant received benefits to which he was not entitled and assessing an overpayment of \$10,220 in combined regular unemployment insurance (regular UI) and Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to

the Department (decision # 91730). That administrative decision cited an administrative decision dated “November 18, 2020” as the reason for the overpayment.¹

(4) On July 21, 2022, claimant contacted the Department regarding the overpayment that they had assessed. On the Department’s online contact form, claimant entered “Overpayment” in the field that asked “What can we help you with?” Exhibit 1 at 4. After some correspondence back and forth with the Department, claimant ultimately filed a request for hearing on July 25, 2022. The Department construed this as a late request for hearing on decision # 135030 and a timely request for hearing on decision # 91730.² Claimant did not mention decision # 135030 in his correspondence with the Department.

(5) As of the date of this decision, a hearing has not been scheduled on decision # 91730.³

CONCLUSIONS AND REASONS: Order No. 22-UI-210272 is set aside and this matter remanded for a hearing on whether claimant’s late request for hearing on decision # 135030 should be allowed and, if so, the merits of that decision.

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 request for hearing on decision # 135030 was due by November 17, 2020. Because claimant did not file his request for hearing until July 25, 2022, the request was late. The order under review found that claimant “received the administrative decision in the mail, but he did not take a proper look at the letter” and in approximately the first week of July 2022 “eventually opened the mail containing the administrative decision and became aware of the administrative decision.” Order No. 22-UI-210272 at 1. The order under review concluded that because claimant did not file the request for hearing until “approximately two or three weeks after becoming aware of the administrative decision,” claimant did not have good cause to file the late request for hearing. Order No. 22-UI-210272 at 3. The record does not support this conclusion or the findings upon which it is based.

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.

³ EAB has taken notice of this fact, which is 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.

At hearing, claimant testified that he became aware of “the administrative decision” “a couple of weeks before July 25, 2022.” Audio Record at 20:00. However, it is not clear from the record whether claimant’s testimony referred to decision # 135030—the voluntary quit administrative decision at issue in this matter—or decision # 91730, an overpayment decision which the Department issued around the time that claimant apparently received the administrative decision about which he testified. It is likely the claimant’s testimony referencing “the administrative decision” was referring to decision # 91730 and not decision # 135030. First, decision # 91730 was issued around the same time that the claimant filed a request for hearing. Second, the correspondence with the Department that ultimately led to the late request for hearing at issue in this matter makes no mention of decision # 135030. Third, logic dictates that claimant would have been considerably more likely to have opened mail from the Department in early July 2022 that the Department had just sent to him, rather than mail that they had sent him two years prior.

On remand, further inquiry should be made to determine when, if at all, claimant received decision # 135030, the decision issued on October 28, 2020, which concluded that he had voluntarily quit without good cause. The ALJ should also develop the record as to when claimant first learned about the existence of decision # 135030 if he did not receive a copy of it; what prompted claimant to file a request for hearing on that decision at the time that he did; and whether he did so within a reasonable time after the factors that prevented him from filing a timely request for hearing ceased.

Further, the Office of Administrative Hearings (OAH) should consolidate the remand hearing on decision # 135030 with a hearing on decision # 91730, which has not yet been scheduled for a hearing.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant had good cause to file the late request for hearing on decision # 135030 and, if so, the merits of that decision, Order No. 22-UI-210272 is reversed, and this matter is remanded.

DECISION: Order No. 22-UI-210272 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 9, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-210272 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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