

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0054

Reversed
Late Applications for Review Allowed
Late Requests for Hearing Allowed
Merits Hearings Required

PROCEDURAL HISTORY: On September 8, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective November 10, 2019 (decision # 83844). Also on September 8, 2021, the Department served notice of an administrative decision concluding that claimant was discharged for misconduct and was disqualified from receiving benefits effective April 25, 2021 (decision # 100317). Also on September 8, 2021, the Department served notice of an administrative decision concluding that claimant was not eligible to receive benefits for the weeks including March 29, 2020 through April 10, 2021 (weeks 14-20 through 14-21) because he was not able to work (decision # 91022). On September 28, 2021, decisions # 83844, 100317, and 91022 became final without claimant having filed requests for hearing. On September 30, 2021, the Department served notice of an administrative decision, based in part on decisions # 83844, 100317, and 91022, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$12,168.00 overpayment of regular unemployment insurance (regular UI) benefits, a \$13,104.00 overpayment of Pandemic Emergency Unemployment Compensation (PEUC) benefits, a \$15,900.00 overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits, a \$1,500.00 overpayment of Lost Wages Assistance (LWA), a \$12,351.60 monetary penalty, and a 52-week penalty disqualification from benefits. On October 20, 2021, the September 30, 2021 administrative decision became final without claimant having filed a request for hearing. On May 12, 2022, claimant filed late requests for hearing on decisions # 83844, 100317, 91022, and the September 30, 2021 administrative decision.

On December 5, 2022, ALJ Frank conducted four consecutive hearings on each respective administrative decision, and on December 13, 2022 issued Orders No. 22-UI-209757, 22-UI-209741,

22-UI-209764, and 22-UI-209748, respectively denying claimant's requests for hearing on decisions # 83844, 100317, 91022, and the September 30, 2021 administrative decision as late without good cause and leaving the administrative decisions undisturbed. On January 3, 2023, Orders No. 22-UI-209757, 22-UI-209741, 22-UI-209764, and 22-UI-209748 became final without claimant having file timely applications for review with the Employment Appeals Board (EAB). On January 5, 2023, claimant filed late applications for review of Orders No. 22-UI-209757, 22-UI-209741, 22-UI-209764, and 22-UI-209748 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-209757, 22-UI-209741, 22-UI-209764, and 22-UI-209748. For case-tracking purposes, this decision is being issued in quadruplicate (EAB Decisions 2023-EAB-0056, 2023-EAB-0055, 2023-EAB-0057, and 2023-EAB-0054).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence are the written statements claimant provided with their late applications for review, and have been marked collectively 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 will remain in the record.

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. 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, apart from the additional evidence specified under the "Evidentiary Matter" section mentioned above. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Claimant was homeless. As of July 2, 2021, had access to a residence in Portland, Oregon for purposes of receiving mail. Claimant gave the Department this address as his address of record on July 2, 2021. On or about late August 2021, claimant lost access to that address for receiving mail.

(2) On September 8, 2021, the Department separately mailed decisions # 83844, 100317, and 91022 to claimant's address on file with the Department. Decisions # 83844, 100317, and 91022 each 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 September 28, 2021." Order No. 22-UI-209757 Exhibit 1 at 2; Order No. 22-UI-209741 Exhibit 1 at 2; Order No. 22-UI-209764 Exhibit 1 at 2.

(3) On September 30, 2021, the Department mailed the September 30, 2021 administrative decision to claimant's address on file with the Department. The September 30, 2021 administrative decision stated, "Any appeal from this decision must be filed on or before October 20, 2021 to be timely." Order No. 22-UI-209748 Exhibit 1 at 1.

(4) Claimant did not receive decisions # 83844, 100317, 91022, or the September 30, 2021 administrative decision because the Department mailed them to the address in Portland to which

claimant had lost access. On or about February 1, 2022, claimant obtained housing at a homeless shelter. On or about the beginning of March 2022, the shelter allowed claimant to receive his mail there. At or near that time, claimant instructed the post office to forward his mail from the house to the shelter.

(5) In March 2022, claimant received a billing statement from the Department that related to his overpayment resulting from the September 30, 2021 administrative decision. The billing statement did not mention claimant's appeal rights for decisions # 83844, 100317, 91022, or the September 30, 2021 administrative decision. However, the bill did explain how claimant could pursue a waiver of the overpayment. As a result, in mid-March 2022, claimant submitted an application for a waiver of the overpayment.

(6) On March 18, 2022, the Department denied claimant's overpayment waiver request. Claimant remained in email communication with the Department regarding his overpayments. On May 12, 2022, during one of these communications, the Department informed claimant of his right to appeal decisions # 83844, 100317, 91022, and the September 30, 2021 administrative decision. On the same day, claimant filed late requests for hearing on decisions # 83844, 100317, 91022, and the September 30, 2021 administrative decision.

(7) On December 13, 2022, the Office of Administrative Hearings (OAH) mailed Orders No. 22-UI-209757, 22-UI-209741, 22-UI-209764, and 22-UI-209748 to claimant's address on file with OAH. Each order stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 22-UI-209757 at 4; Order No. 22-UI-209741 at 4; Order No. 22-UI-209764 at 4; Order No. 22-UI-209748 at 4. Each order also stated on their respective certificate of mailing that "Any appeal from this Order must be filed on or before January 3, 2023 to be timely."

(8) Claimant did not receive Orders No. 22-UI-209757, 22-UI-209741, 22-UI-209764, or 22-UI-209748 until January 5, 2023. EAB Exhibit 1 at 1. Claimant did not receive the orders until that date because shelter staff misplaced the orders when processing claimant's mail and did not correctly process them until January 5, 2023. On January 5, 2023, claimant filed applications for review on Orders No. 22-UI-209757, 22-UI-209741, 22-UI-209764, or 22-UI-209748.

CONCLUSIONS AND REASONS: Claimant's late applications for review of Orders No. 22-UI-209757, 22-UI-209741, 22-UI-209764, and 22-UI-209748 are allowed. Orders No. 22-UI-209757, 22-UI-209741, 22-UI-209764, and 22-UI-209748 are reversed, claimant's late requests for hearing are allowed, and hearings on the merits of decisions # 83844, 100317, 91022, and the September 30, 2021 administrative decision are required.

Late Applications for Review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a "reasonable time" upon a showing of "good cause." ORS 657.875; OAR 471-041-0070(2). "Good cause" means that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A "reasonable time" is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will

be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The applications for review of Orders No. 22-UI-209757, 22-UI-209741, 22-UI-209764, and 22-UI-209748 were due by January 3, 2023. Because claimant did not file his applications for review until January 5, 2023, the applications for review were late. Claimant provided written statements with his applications for review. *See* EAB Exhibit 1. In them, claimant explained that, because of a processing error by shelter staff, he did not receive the orders under review until January 5, 2023. EAB Exhibit 1 at 1. Upon receiving the orders on January 5, 2023, claimant filed applications for review on the same day.

Claimant's evidence that he was denied access to the orders due to the homeless shelter's processing error is sufficient to show that claimant failed to timely file applications for review by the January 3, 2023 deadline due to factors beyond his reasonable control. Those factors ceased to exist on January 5, 2023, when shelter staff correctly processed claimant's mail and claimant received the orders under review. Claimant filed his applications for review on the same day. Claimant therefore filed their applications for review within a seven-day reasonable time after the circumstances that prevented a timely filing ceased to exist. Thus, claimant established good cause to extend the filing deadline to January 5, 2023, and the late applications for review are allowed.

Late Requests for Hearing. 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 September 8, 2021, the Department mailed decisions # 83844, 100317, and 91022 to claimant at claimant's address of record on file with the Department. The 20-day deadline for claimant to file timely requests for hearing on those decisions was September 28, 2021. Claimant did not file requests for hearing on decisions # 83844, 100317, and 91022 until May 12, 2022. Accordingly, claimant's requests for hearing were late.

Similarly, on September 30, 2021, the Department mailed the September 30, 2021 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 the September 30, 2021 administrative decision was October 20, 2021. Claimant did not file a request for hearing on the September 30, 2021 administrative decision until May 12, 2022. Accordingly, claimant's request for hearing was late.

The orders under review concluded that claimant failed to show good cause to extend the deadlines to appeal to May 12, 2022. Order No. 22-UI-209757 at 3-4; Order No. 22-UI-209741 at 3-4; Order No. 22-UI-209764 at 3-4; Order No. 22-UI-209748 at 3-4. The consolidated record does not support these conclusions.

Claimant did not receive decisions # 83844, 100317, 91022, or the September 30, 2021 administrative decision because he was homeless and no longer had access to the address where they were mailed. Claimant's homelessness and lack of access to the address were factors beyond his reasonable control

that prevented him from filing by the deadlines to appeal. These factors persisted after claimant received, at the homeless shelter, a March 2021 bill from the Department that related to his overpayment resulting from the September 30, 2021 administrative decision. The factors persisted because the billing statement informed claimant only of his opportunity to apply for an overpayment waiver, it did not put claimant on notice of his right to appeal decisions # 83844, 100317, 91022, or the September 30, 2021 administrative decision. On May 12, 2022, when the Department informed claimant of his right to appeal decisions # 83844, 100317, 91022, and the September 30, 2021 administrative decision in an email communication, the factor beyond claimant's control ceased to exist. On the same day, claimant filed requests for hearing on decisions # 83844, 100317, 91022, and the September 30, 2021 administrative decision. Claimant therefore filed his requests for hearing within a seven-day reasonable time after the factor that prevented a timely filing ceased to exist.

Accordingly, claimant established good cause to extend the deadlines to file requests for hearing on decisions # 83844, 100317, 91022, and the September 30, 2021 administrative decision to May 12, 2022. Claimant's late requests for hearing are therefore allowed, and claimant is entitled to a hearing on the merits of decisions # 83844, 100317, 91022 and the September 30, 2021 administrative decision.

DECISION: Orders No. 22-UI-209757, 22-UI-209741, 22-UI-209764, and 22-UI-209748 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: February 14, 2023

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 22-UI-209757, 22-UI-209741, 22-UI-209764, or 22-UI-209748 or return these matters to EAB. Only a timely application for review of the subsequent order will cause the 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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