EO: 200
BYE: 202117

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

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EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0096

Reversed
Late Requests for Hearing Allowed
Merits Hearings Required on Decisions # 154424, 134337, and 155309

Revocadas
Se Permiten Las Aplicaciones Tardías de Audiencia
Se Requieren Audiencias de los Méritos de las Decisiónes # 154424, 134337, y 155309

PROCEDURAL HISTORY: On November 23, 2020, 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 March 22, 2020 (decision # 154424). On December 14, 2020, decision # 154424 became final without claimant having filed a timely request for hearing. On March 30, 2022, the Department served notice of an administrative decision, based in part on decision # 154424, assessing an overpayment of $1,640 in regular unemployment insurance (regular UI) benefits and $6,000 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was liable to repay the Department (decision # 134337). On April 19, 2022, decision # 134337 became final without claimant having filed a request for hearing. On April 20, 2022, the Department served notice of an administrative decision denying claimant's request for a waiver of a $6,000 overpayment in FPUC benefits that the Department had previously assessed via decision # 134337 on March 30, 2022 (decision # 155309). On May 10, 2022, decision # 155309 became final without claimant having filed a request for hearing. On July 29, 2022, claimant filed a late request for hearing on decision # 154424. On August 1, 2022, claimant filed late requests for hearing on decisions # 134337 and 155309.

ALJ Kangas considered claimant's requests. On October 27, 2022, ALJ Kangas issued Order No. 22-UI-206079, dismissing claimant's request for hearing on decision # 154424 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 10, 2022. On November 4, 2022, ALJ Kangas issued Orders No. 22-UI-206637 and 22-UI-206638, dismissing claimant's requests for hearing on decisions # 134337 and 155309, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by November 18, 2022. On November 14, 2022, claimant filed a late response to the appellant questionnaire for Order No. 22-UI-206079 and a timely response to the appellant questionnaire for Orders No. 22-UI-206637 and

22-UI-206638. On December 1, 2022, the Office of Administrative Hearings (OAH) mailed three letters stating, respectively, that Orders No. 22-UI-206079, 22-UI-206637 and 22-UI-206638 were vacated and that new hearings would be scheduled to determine whether claimant had good cause to file the late requests for hearing and, if so, the merits of decisions # 154424, 134337, and 155309.

On December 15, 2022, ALJ Ramey conducted a consolidated hearing that was interpreted in Spanish, and on December 23, 2022 issued Orders No. 22-UI-210832, 22-UI-210833, and 22-UI-210834, which concluded, respectively, that each of claimant's requests for hearing were late without good cause and respectively leaving each of decisions # 154424, 134337, and 155309 undisturbed. On January 12, 2023, claimant filed applications for review of Orders No. 22-UI-210832, 22-UI-210833, and 22-UI-210834 with the Employment Appeals Board (EAB).

HISTORIA PROCESAL: *El 23 de noviembre de 2020, el Departamento de Empleo de Oregón (el Departamento) envió notificación de una decisión administrativa concluyendo que el reclamante dejó el trabajo sin una buena causa y fue descalificado de recibir beneficios de desempleo a partir del 22 de marzo de 2020 (decisión # 154424). Decisión # 154424 se convirtió en final el 14 de diciembre de 2020 sin que el reclamante hubiera presentado una aplicación para una audiencia. El 30 de marzo de 2022, el Departamento envió notificación de una decisión administrativa, basada en parte en decisión # 154424, que impusó un sobrepago de $1,640 en beneficios regulares de desempleo (UI regular) y $6,000 en Compensación Federal por Desempleo por la Pandemia (FPUC) que el reclamante estaba obligado a pagar al Departamento (decisión # 134337). Decisión # 134337 se convirtió en final el 19 de abril de 2022 sin que el reclamante hubiera presentado una aplicación para una audiencia. El 20 de abril de 2022, el Departamento envió notificación de una decisión administrativa que denegaba la solicitud de exención del reclamante del sobrepago de $6,000 en FPUC que el Departemento había impuesto previamente por medio de decisión # 134337 el 30 de marzo de 2022 (decisión # 155309). Decisión # 155309 se convirtió en final el 10 de mayo de 2022 sin que el reclamante hubiera presentado una aplicación para una audiencia. El 29 de julio de 2022, el reclamante presentó una aplicación tardía para una audiencia sobre decisión # 154424. El primer de agosto de 2022, el reclamante presentó una aplicación tardía para unas audiencias sobre decisiónes # 134337 and 155309.*

La Jueza Administrativa (ALJ) Kangas revisó las aplicaciónes tardías del reclamante. El 27 de octubre de 2022, ALJ Kangas emitió la Orden No. 22-UI-206079 rechazando la aplicación del reclamante sobre decisión # 154424 porque la aplicación era tarde. La orden también dio al reclamante la oportunidad de responder a un cuestionario no más tardar que el 10 de noviembre de 2022 sobre por qué el reclamante presentó su aplicación tarde. El 4 de noviembre de 2022, ALJ Kangas emitió las Ordenes Nos. 22-UI-206637 y 22-UI-206638, rechazando la aplicación del reclamante sobre decisiónes # 134337 y 155309 porque la aplicación era tarde. Las ordenes también dio al reclamante la oportunidad de responder a un cuestionario no más tardar que el 18 de noviembre de 2022 sobre por qué el reclamante presentó su aplicación tarde.

El 14 de noviembre de 2022, el reclamante presentó una respuesta tardía al cuestionario sobre Orden No. 22-UI-206079 y una respuesta oportuna al cuestionario sobre Ordenes Nos. 22-UI-206637 y 22-UI-206638. El primer de diciembre de 2022, la Oficina de Audiencias Administrativas (OAH) envió una carta diciendo que las Ordenes Nos. 22-UI-206079, 22-UI-206637 y 22-UI-206638 fueron canceladas y que habría una audiencia para determinar si el reclamante tuve buena causa para las aplicaciónes

tardías y si hubiera buena causa, determinar los méritos de las decisiónes # 154424, 134337, and 155309.

El 15 de diciembre de 2022, ALJ Ramey llevó a cabo una audiencia que fue interpretada en espanol, y el 23 de diciembre de 2022, emitió las Ordenes Judiciales Nos. 22-UI-210832, 22-UI-210833, y 22-UI-210834 rechazando las aplicaciónes tardías del reclamante porque fueron tardes sin buena causa y dejando # 154424, 134337, and 155309 sin cambios. El 12 de enero de 2023, el reclamante archivó unas aplicaciónes para revisión de Las Ordenes Judiciales Nos. 22-UI-210832, 22-UI-210833, y 22-UI-210834 con a la Junta de Apelaciones de Empleo (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-210832, 22-UI-210833, and 22-UI-210834. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2023-EAB-0096, 2023-EAB-0097, and 2023-EAB-0098).

FINDINGS OF FACT: (1) Claimant is a Spanish-speaker. He does not understand English well.

(2) On November 23, 2020, the Department mailed decision # 154424 to claimant's address on file with the Department. Decision # 154424 concluded that claimant was disqualified from receiving benefits because he quit work without good cause. Decision # 154424 stated in English, with a Spanish translation, "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 December 14, 2020." Order No. 22-UI-210832 Exhibit 1 at 2.

(3) On December 3, 2020, claimant called the Department regarding decision # 154424. Claimant spoke with multiple different representatives, only one of whom spoke Spanish. The representatives stated that claimant would need to appeal decision # 154424. Although claimant was a Spanish-speaker who did not understand English well, the representatives did not file the appeal for claimant over the phone but merely told him how to request a hearing via the Department's website. At the time of the December 3, 2020 call, claimant "thought that things had been taken care of about" requesting an appeal of decision # 154424. Transcript at 17.

(4) On December 14, 2020, decision # 154424 became final without claimant having filed a request for hearing on the decision.

(5) On March 30, 2022, the Department mailed decision # 134337 to claimant at claimant's address of record on file with the Department. Decision # 134337 concluded that claimant was liable for an overpayment because he received benefits to which he was not entitled. Decision # 134337 stated in English, with a Spanish translation, "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 April 19, 2022 to be timely." Order No. 22-UI-210833 Exhibit 1 at 2.

(6) On April 11, 2022, claimant called the Department regarding decision # 134337. During the call, a Department representative told claimant to "fill out a state waiver and appeal the decision." Transcript at 8. Although claimant was a Spanish-speaker who did not understand English well, the representative did not file a request for hearing on decision # 134337 for claimant over the phone but merely told him to appeal the decision.

(7) On April 14 and 15, 2022, claimant visited one of the Department's WorkSource offices to seek assistance regarding his overpayment. Claimant believed that he had requested a hearing on decision # 134337 in person at the WorkSource office during these visits.

(8) On April 19, 2022, decision # 134337 became final without claimant having filed a request for hearing on the decision.

(9) On April 20, 2022, the Department mailed decision # 155309 to claimant at claimant's address of record on file with the Department. Decision # 155309 denied claimant a waiver of the overpayment assessed by decision # 134337. Decision # 155309 stated in English, with a Spanish translation, "Any appeal from this decision must be filed on or before May 10, 2022 to be timely." Order No. 22-UI-210834 Exhibit 1 at 2.

(10) On April 28, 2022, claimant called the Department regarding his overpayment. During the call, a Department representative told claimant "he would need to request a late appeal" of the overpayment decision, decision # 134337. Transcript at 8. Although claimant was a Spanish-speaker who did not understand English well, the representative did not file requests for hearing on decisions # 134337 or 155309 over the phone but merely told claimant to file a late appeal of decision # 134337. The representative did not mention decision # 155309, the overpayment waiver decision, even though an appeal of that decision would have been timely had it been filed on the date of the phone conversation.

(11) On May 10, 2022, decision # 155309 became final without claimant having filed a request for hearing on the decision. Claimant thought that during his conversation with the Department on April 28, 2022, the Department "had received the request" for hearing on decision # 155309 "and that [claimant] was just waiting for a response to it." Transcript at 22.

(12) On July 29, 2022, claimant again called the Department regarding his overpayment. Claimant stated that he believed he had requested a hearing on the overpayment decision, decision # 134337. The representative replied that a request for hearing on that decision had not been received. In that call, the representative filed a late request for hearing on decision # 154424 on claimant's behalf. For unknown reasons, the representative did not file a request for hearing on claimant's behalf for decisions # 134337 and 155309.

(13) On August 1, 2022, claimant filed late requests for hearing on decisions # 134337 and 155309.

CONCLUSIONS AND REASONS: Orders No. 22-UI-210832, 22-UI-210833, and 22-UI-210834 are reversed, claimant's late requests for hearing are allowed, and hearings on the merits of decisions # 154424, 134337, and 155309 are required.

CONCLUSIONES Y RAZONES: *Se revocan Ordenes Judiciales Nos. 22-UI-210832, 22-UI-210833, y 22-UI-210834, se permiten las aplicaciónes tardías de audiencia del reclamante, y se requieren audiencias de los méritos de las decisiónes # 154424, 134337, y 155309.*

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 # 154424 was due by December 14, 2020. Because claimant did not file his request for hearing until July 29, 2022, the request was late.

The request for hearing on decision # 134337 was due by April 19, 2022. Because claimant did not file his request for hearing until August 1, 2022, the request was late.

The request for hearing on decision # 155309 was due by May 10, 2022. Because claimant did not file his request for hearing until August 1, 2022, the request was late.

The orders under review each respectively dismissed claimant's appeals of decisions # 154424, 134337, and 155309 because they concluded that claimant failed to show good cause to extend the deadlines to appeal each of the three administrative decisions. Order No. 22-UI-210832 at 3; Order No. 22-UI-210833 at 3; Order No. 22-UI-210834 at 3. The record does not support these conclusions. Claimant established good cause to extend the deadlines to appeal decisions # 154424, 134337, and 155309.

It is evident from the record that claimant failed to request hearings on the three decisions by their respective deadlines due to excusable mistakes. In each situation, claimant made substantial efforts to comply with the appeal deadline but was hindered by a language barrier and failures on the part of the Department to file appeals for claimant over the phone or in person.

With respect to decision # 154424, claimant called the Department prior to the appeal deadline, spoke with multiple different representatives (only one of whom spoke Spanish), and was told merely how to request a hearing via the Department's website. The representatives did not file an appeal for claimant over the phone despite the fact that claimant was a Spanish-speaker who did not understand English well. At the time of the call, claimant "thought that things had been taken care of" regarding requesting an appeal of decision # 154424. Transcript at 17. This mistaken belief was excusable and continued until claimant called the Department on July 29, 2022 about his overpayment and a Department representative filed a request for hearing on decision # 154424 for claimant over the phone. Because of this excusable mistake, claimant established good cause to extend the deadline to file an appeal on decision # 154424 to July 29, 2022. Claimant filed his appeal on that day, which was within a seven-day reasonable time.

As to decision # 134337, claimant called the Department and visited a WorkSource office on two separate occasions seeking assistance on the decision, all prior to the appeal deadline. During the call, although claimant was a Spanish-speaker who did not understand English well, the representative did not file a request for hearing on decision # 134337 over the phone but merely told claimant to appeal the decision. During the two WorkSource office visits, claimant believed that he had requested a hearing on decision # 134337 in person.

Although claimant made another call to the Department on April 28, 2022 and was told "he would need to request a late appeal" on decision # 134337, it is unknown whether that information was conveyed in English or in Spanish such that it might correct claimant's mistaken belief that he had already filed an

appeal on the decision. Transcript at 8. Moreover, it is evident that claimant continued to mistakenly believe that he had requested a hearing on decision # 134337 because when claimant called the Department on July 29, 2022 about his overpayment he stated that that he believed he had requested a hearing on the decision. Thus, claimant's failure to file a request for hearing on decision # 134337 by the April 19, 2022 deadline was the result of an excusable mistake. Because of this excusable mistake, claimant established good cause to extend the deadline to file an appeal on decision # 134337 to August 1, 2022. Claimant filed his appeal of decision on that day, which was within a seven-day reasonable time.

Finally, as to decision # 155309, claimant called the Department prior to the deadline to appeal the decision. During the call, a Department representative told claimant he would need to request a late appeal of the overpayment decision, decision # 134337. However, the representative said nothing of decision # 155309, even though an appeal of that decision would have been timely had it been filed on the date of the phone conversation and despite the fact that claimant was a Spanish-speaker who did not understand English well. Claimant thought that during his conversation with the Department on April 28, 2022, the Department "had received the request" for hearing on decision # 155309 and that, afterward, claimant "was just waiting for a response to it." Transcript at 22. This mistaken belief was excusable and continued until claimant filed his late request for hearing on decision # 155309 on August 1, 2022. Because of this excusable mistake, claimant established good cause to extend the deadline to file an appeal on decision # 155309 to August 1, 2022. Claimant filed his appeal on that day, which was within a seven-day reasonable time.

For these reasons, claimant's late requests for hearing on decisions # 154424, 134337, and 155309 are allowed, and claimant is entitled to hearings on the merits of each of those decisions.

DECISION: Orders No. 22-UI-210832, 22-UI-210833, and 22-UI-210834 are set aside, and these matters remanded for further proceedings consistent with this order.

DECISIÓN: *Ordenes Judiciales Nos. 22-UI-210832, 22-UI-210833, y 22-UI-210834* se ponen a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.

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

DATE of Service: March 3, 2023

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 22-UI-210832, 22-UI-210833, and 22-UI-210834 or return the matters to EAB. Only timely applications for review of the respective subsequent orders will cause any of these matters to return to EAB.

NOTA: *La falta de cualquier parte de presentarse a la audiencia sobre la remisión no reinstalará Ordenes Judiciales Nos. 22-UI-210832, 22-UI-210833, y 22-UI-210834, ni devolverá estas ordenes a la EAB. Solamente una aplicación oportuna para revisión de la orden subsiguiente de la nueva audiencia volverá este caso a la 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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