

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0179

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On March 1, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work during the weeks including June 7, 2020 through February 20, 2021 (weeks 24-20 through 07-21) and was therefore not eligible to receive unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 64945). Also on March 1, 2021, the Department served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective February 23, 2021 (decision # 63437). On March 22, 2021, decisions # 64945 and 63437 became final with claimant having filed requests for hearing. On May 4, 2022, the Department served notice of an administrative decision, based in part on decision # 63437, concluding that claimant was paid benefits to which they were not entitled and assessing an overpayment of \$16,848 in regular benefits (regular UI), \$5,832 in Pandemic Emergency Unemployment Compensation benefits (PEUC), and \$6,000 in Federal Pandemic Unemployment Compensation benefits (FPUC) that claimant was required to repay to the Department (decision # 135042). On May 24, 2022, decision # 135042 became final without claimant having filed a request for hearing. On August 2, 2022, claimant filed late requests for hearing on decisions # 64945, 63437, and 135042.

ALJ Kangas considered claimant's requests, and on November 15, 2022 issued Orders No. 22-UI-207283, 22-UI-207284, and 22-UI-207286, dismissing claimant's requests for hearing on decisions # 64945, 63437, and 135042, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by November 29, 2022. On December 1, 2022, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 22-UI-207283, 22-UI-207284, and 22-UI-207286 with the Employment Appeals Board (EAB). On December 14, 2022, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding these matters because the questionnaire response was late. These matters come before EAB based upon claimant's December 1, 2022 applications for review of Orders No. 22-UI-207283, 22-UI-207284, and 22-UI-207286.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-207283, 22-UI-207284, and 22-UI-207286. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2022-EAB-0178, 2022-EAB-0179, and 2022-EAB-0180).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant’s response to the appellant questionnaire, marked 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.

CONCLUSIONS AND REASONS: Orders No. 22-UI-207283, 22-UI-207284, and 22-UI-207286 are set aside and these matters remanded for a hearing on whether claimant’s late requests for hearing on decisions # 64945, 63437, and 135042 should be allowed and, if so, the merits of those administrative decisions.

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 March 1, 2021, the Department mailed decisions # 64945 and 63437 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 decisions was March 22, 2021. Claimant did not file requests for hearing on decisions # 64945 and 63437 until August 2, 2022. Likewise, on May 4, 2022, the Department mailed decision # 135042 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 decision # 135042 was May 24, 2022. Claimant did not file a request for hearing on decision # 135042 until August 2, 2022. Accordingly, claimant’s requests for hearing on decisions # 64945, 63437, and 135042 were late.

In their appellant questionnaire response, claimant indicated that they did not receive decisions # 64945, 63437, or 135042 in the mail. EAB Exhibit 1 at 1, 2. Further, claimant stated that they filed their appeals of decisions # 64945, 63437, and 135042 when they did because they called the Department and learned of the administrative decisions. EAB Exhibit 1 at 2. If claimant did not receive the administrative decisions, claimant’s late requests for hearing may have been the result of factors beyond their reasonable control. However, further inquiry is needed to determine whether claimant had good cause to file the late requests for hearing, and whether they filed the late requests for hearing within a reasonable time. On remand, the ALJ should ask questions to confirm that claimant failed to receive the three administrative decisions and, if so, to determine whether claimant’s failure to receive the administrative decisions was due to a factor beyond claimant’s reasonable control or an excusable mistake. The ALJ should also ask questions to identify precisely when claimant learned of the existence of the administrative decisions and claimant’s right to appeal them, whether the circumstances (if any) that prevented a timely filing of decisions # 64945, 63437, and 135042 ceased to exist at that point, and, if

so, whether claimant's August 2, 2022 requests for hearing were filed within a seven-day "reasonable time" thereafter.

Orders No. 22-UI-207283, 22-UI-207284, and 22-UI-207286 therefore are reversed, and these matters remanded for a hearing on whether claimant's late requests for hearing on decisions # 64945, 63437, and 135042 should be allowed and, if so, the merits of the respective administrative decisions.

DECISION: Orders No. 22-UI-207283, 22-UI-207284, and 22-UI-207286 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 9, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-207283, 22-UI-207284, or 22-UI-207286 or return these matters to EAB. Only a timely application for review of the respective 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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