

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0206

Order No. 22-UI-201417 Affirmed ~ Late Request for Hearing Dismissed
Orders No. 22-UI-201415 and 22-UI-201419 Reversed ~
Late Requests for Hearing Allowed, Merits Hearings Required

PROCEDURAL HISTORY: On October 28, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the weeks including May 10, 2020 through May 23, 2020 (weeks 20-20 through 21-20) and August 2, 2020 through August 8, 2020 (week 32-20) and therefore was ineligible to receive unemployment insurance benefits for those weeks (decision # 90737). On November 17, 2021, decision # 90737 became final without claimant having filed a request for hearing.

On March 8, 2022, the Department served notice of an administrative decision concluding that claimant received benefits to which they were not entitled, and assessing an overpayment of \$1,500 in Lost Wages Assistance (LWA) benefits that claimant was required to repay to the Department (decision # 0581615). On March 11, 2022, the Department served notice of an administrative decision, based in part on decision # 0581615, concluding that claimant was not eligible for waiver of repayment of the overpayment that the Department had previously assessed (decision # 130324). On March 28, 2022, decision # 0581615 became final without claimant having filed a request for hearing. On March 31, 2022, decision # 130324 became final without claimant having filed a request for hearing.

On May 2, 2022, claimant filed late requests for hearing on decisions # 90737, 0581615, and 130324. ALJ Kangas considered claimant's requests, and on August 26, 2022 issued Orders No. 22-UI-201417, 22-UI-201415, and 22-UI-201419, dismissing claimant's requests for hearing on decisions # 90737, 0581615, and 130324, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by September 9, 2022. On September 14, 2022, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 22-UI-201417, 22-UI-201415, and 22-UI-201419 with the Employment Appeals Board (EAB). On February 8, 2023, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue additional orders regarding these matters because the questionnaire response was late. These matters come before E

AB based upon claimant's September 14, 2022 applications for review of Orders No. 22-UI-201417, 22-UI-201415, and 22-UI-201419.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-201417, 22-UI-201415, and 22-UI-201419. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2022-EAB-0207, 2022-EAB-0206, and 2022-EAB-0208).

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.

FINDINGS OF FACT: (1) On October 28, 2021, the Department mailed decision # 90737 to claimant's address on file with the Department. Decision # 90737 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, 2021." Order No. 22-UI-201417 Exhibit 1 at 2.

(2) Claimant last claimed benefits in September 2021.¹

(3) In February 2022, claimant and their partner broke up, and claimant moved out of their shared home. Claimant subsequently became homeless, but kept their ex-partner's mailing address as their address of record with the Department. Claimant did not have a vehicle at the time. Because of this, and because claimant had to coordinate with their ex-partner as to when claimant could visit to pick up their mail, claimant did not have regular access to their mail.

(4) On March 8, 2022, the Department mailed decision # 0581615 to claimant's address on file with the Department. Decision # 0581615 stated, "You have the right to appeal this decision if you believe it is wrong. Your request for appeal must be received no later than March 28, 2022." Order No. 22-UI-201415 Exhibit 1 at 1.

(5) On March 11, 2022, the Department mailed decision # 130324 to claimant's address on file with the Department. Decision # 130324 stated, "Any appeal from this decision must be filed on or before March 31, 2022 to be timely." Order No. 22-UI-201419 Exhibit 1 at 2.

(6) On or around April 29, 2022, claimant received decision # 130324. On May 2, 2022, claimant submitted requests for hearing on decisions # 90737, 0581615, and 130324.

¹ 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.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing on decision # 90737 is dismissed, and Order No. 22-UI-201417 is affirmed. Claimant had good cause to file the late requests for hearing on decisions # 0581615 and 130324. Orders No. 22-UI-201415 and 22-UI-201419 are reversed and these matters remanded for hearings on the merits of decisions # 0581615 and 130324.

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. Under OAR 471-040-0010(1)(b)(A), “good cause” 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 requests for hearing on decisions # 90737, 0581615, and 130324 were due by November 17, 2021, March 28, 2022, and March 31, 2022, respectively. Because claimant did not file their requests for hearing on any of the administrative decisions until May 2, 2022, the requests were late.

On claimant’s appellant questionnaire response, claimant indicated that they received the administrative decision mailed on March 11, 2022 (i.e., decision # 130324) on April 29 or 30, 2022. EAB Exhibit 1 at 1. Claimant explained that they did not receive the administrative decision until that time because they had moved out of their ex-partner’s home in February 2022, were homeless and without a vehicle, and did not have regular access to the mail that was delivered to their ex-partner’s home. EAB Exhibit 1 at 2. Claimant’s statements show that they were unable to receive decision # 130324 until after the timely appeal deadline had passed due to factors beyond their control. Those factors ceased when claimant was able to access their mail at their ex-partner’s house, on April 29 or 30, 2022. Additionally, because claimant filed the request for hearing within seven days after the factors beyond their reasonable control ceased, claimant filed the late request for hearing on decision # 130324 within a reasonable time, and therefore had good cause to file that late request for hearing.

Claimant did not specifically mention either of the other two administrative decisions in their response to the appellant questionnaire. However, given that decision # 0581615 was mailed on March 8, 2022—just three days prior to the issuance of decision # 130324—it can be reasonably inferred that claimant learned of both decision # 0581615 and decision # 130324 at the same time in late April 2022. Therefore, for the same reason that claimant had good cause to file the late request for hearing on decision # 130324, claimant also had good cause to file the late request for hearing on decision # 0581615.

However, none of the information that claimant provided with their appellant questionnaire response explains why they failed to file a timely request for hearing on decision # 90737. That decision was issued in October 2021, several months before claimant moved out of their shared home with their ex-partner. Therefore, the reasoning that supports the conclusion that claimant had good cause to file the late requests for hearing on the March 2022 administrative decisions is inapplicable to decision # 90737,

and claimant has not met their burden to show that they had good cause to file the late request for hearing on decision # 90737.

For the above reasons, claimant's late requests for hearing on decisions # 0581615 and 130324 are allowed, and claimant is entitled to hearings on the merits of those decisions. Claimant's late request for hearing on decision # 90737 is subject to dismissal under ORS 657.875 and OAR 471-040-0010, and decision # 90737 remains undisturbed.

DECISION: Order No. 22-UI-201417 is affirmed. Orders No. 22-UI-201415 and 22-UI-201419 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 24, 2023

NOTE: You may appeal EAB Decision 2023-EAB-0207 by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-201415 or 22-UI-201419 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these matters 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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