

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0210-R

2023-EAB-0210-R - Request for Reconsideration Allowed
Late Applications for Review Allowed
Order No. 22-UI-207872 and 22-UI-207873 – Reversed & Remanded

PROCEDURAL HISTORY: On October 21, 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 October 25, 2020 (decision # 93111). On November 10, 2021, decision # 93111 became final without claimant having filed a request for hearing. On June 3, 2022, the Department served notice of an administrative decision assessing an overpayment of \$3,906 in regular unemployment insurance (regular UI) benefits, \$21,015 in Pandemic Emergency Unemployment Compensation (PEUC) benefits, and \$10,800 of Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was liable to repay to the Department (decision # 145320). On June 23, 2022, decision # 145320 became final without claimant having filed a request for hearing. On August 12, 2022, claimant filed late requests for hearing on decisions # 93111 and 145320.

ALJ Kangas considered claimant's requests, and on November 21, 2022 issued Orders No. 22-UI-207872 and 22-UI-207873, respectively dismissing claimant's requests for hearing on decisions # 93111 and 145320 as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by December 5, 2022. On December 12, 2022, Orders No. 22-UI-207872 and 22-UI-207873 became final without claimant having filed a timely response to the appellant questionnaire or timely applications for review. On December 19, 2022, claimant filed a late response to the appellant questionnaire and late applications for review of Order No. 22-UI-207872 and Order No. 22-UI-207873 with the Employment Appeals Board (EAB). On January 5, 2023, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding the matters because the questionnaire response was late. On February 22, 2023, EAB issued EAB Decision 2023-EAB-0210, dismissing claimant's late application for review of Order No. 22-UI-207872 without prejudice, subject to their right to request reconsideration and provide additional evidence to EAB regarding the reasons for the late filing. On March 14, 2023, claimant filed a timely request for reconsideration of EAB Decision 2023-EAB-0210.

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 appellant questionnaire response and application for review form, which has been marked as EAB Exhibit 1. The other piece of additional evidence is claimant’s request for reconsideration of EAB Decision 2023-EAB-0210, which has been marked as EAB Exhibit 2. Copies of EAB Exhibits 1 and 2 were provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1 and 2 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 exhibits will remain in the record.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-207872 and 22-UI-207873. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0210-R and 2023-EAB-0418).

FINDINGS OF FACT: (1) On October 21, 2021, the Department mailed decision # 93111 to claimant’s address of record on file with the Department. Decision # 93111 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 10, 2021.” Order No. 22-UI-207872 Exhibit 1 at 2.

(2) On June 3, 2022, the Department mailed decision # 145320 to claimant’s address of record on file with the Department. Decision # 145320 stated, “Any appeal from this decision must be filed on or before June 23, 2022 to be timely.” Order No. 22-UI-207873 Exhibit 1 at 4.

(3) Claimant had frequent problems with their mail being lost, stolen, or mis-delivered. EAB Exhibit 1 at 1. As a result, claimant did not receive decisions # 93111 or 145320 in the mail. EAB Exhibit 1 at 1.

(4) At some point after June 23, 2022, claimant received a billing statement from the Department stating that claimant owed an overpayment. EAB Exhibit 1 at 1. After receiving the billing statement, claimant filed a request for a waiver of the overpayment with the Department. At some point after that, claimant spoke to a Department representative and learned that the waiver request had been denied because claimant’s “former employer claims [that claimant] voluntarily left [their] job[.]” EAB Exhibit 1 at 1.

(5) On August 12, 2022, claimant filed late requests for hearing on decisions # 93111 and 145320. Claimant filed the hearing requests when they did because they received the “info of waiver being denied.” EAB Exhibit 1 at 2.

(6) On November 21, 2022, OAH mailed Order No. 22-UI-207872 to claimant’s address of record on file with the Department. Order No. 22-UI-207872 stated on its certificate of mailing, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than December 12, 2022.” Also on November 21, 2022, OAH mailed Order No. 22-UI-207873 to claimant’s address of record. Order No. 22-UI-207873 stated on its certificate of mailing, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than December 12, 2022.”

(7) Claimant did not receive Order No. 22-UI-207872 or Order No. 22-UI-207873 in the mail. EAB Exhibit 2 at 1. In early December 2022, claimant contacted the Department about the status of their

requests for hearing because several months had passed since claimant had filed the requests and claimant had not received anything. EAB Exhibit 2 at 1. Claimant was transferred to OAH. Claimant asked the OAH representative to email copies of Orders No. 22-UI-207872 and 22-UI-207873 to claimant. EAB Exhibit 2 at 1. By no earlier than December 12, 2022, claimant received Orders No. 22-UI-207872 and 22-UI-207873 via email. On December 19, 2022, claimant filed late applications for review of Orders No. 22-UI-207872 and 22-UI-207873 with EAB.

CONCLUSIONS AND REASONS: Claimant’s request for reconsideration of EAB Decision 2023-EAB-0210 is allowed. Claimant’s late applications for review of Orders No. 22-UI-207872 and 22-UI-207873 are allowed. Orders No. 22-UI-207872 and 22-UI-207873 are reversed, and the matters remanded for further development of the record.

Request for Reconsideration. ORS 657.290(3) authorizes the Employment Appeals Board, upon its own motion or at the request of a party, to reconsider any previous decision of the Employment Appeals Board, including “the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law.” *See also* OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

In EAB Decision 2023-EAB-0210, EAB dismissed claimant’s late application for review of Order No. 22-UI-207872 without prejudice and subject to claimant filing a timely request for reconsideration within 20 days after EAB’s dismissal decision was issued. Claimant filed a request for reconsideration consistent with the requirements set forth in OAR 471-041-0145. The request for reconsideration of EAB Decision 2023-EAB-0210 therefore is allowed.

Late Applications for Review. An application for review is timely if it is filed within 20 days of the date that 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 application for review of Order No. 22-UI-207872 was due by December 12, 2022. The application for review of Order No. 22-UI-207873 was likewise due by December 12, 2022. Because claimant did not file their applications for review until December 19, 2022, the applications for review were late.

Claimant had frequent problems with mail being lost, stolen, or mis-delivered. Because of this, claimant did not receive Order No. 22-UI-207872 or Order No. 22-UI-207873 in the mail. Claimant’s failure to receive the orders in the mail was a factor beyond claimant’s reasonable control that prevented a timely filing. Claimant had previously filed their late requests for hearing on decisions # 93111 and 145320. Some months passed without claimant receiving anything regarding the late requests for hearing, which caused claimant to contact the Department. The Department transferred claimant to OAH who emailed

Orders No. 22-UI-207872 and 22-UI-207873 to claimant. Upon receiving Orders No. 22-UI-207872 and 22-UI-207873 by email the factor beyond claimant's reasonable control ceased.

Because claimant's application for review form and appellant questionnaire response were dated December 15, 2022, more likely than not, claimant received the orders by no earlier than December 12, 2022. EAB Exhibit 1 at 2, 3. Claimant filed their applications for review of Orders No. 22-UI-207872 and 22-UI-207873 on December 19, 2022, which was within a seven-day "reasonable time" of when the factor beyond claimant's reasonable control ceased. Accordingly, claimant established good cause to extend the deadline to file the applications for review to December 19, 2022, 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 October 21, 2021, the Department mailed decision # 93111 to claimant at claimant's address of record. The 20-day deadline for claimant to file a timely request for hearing on that decision was November 10, 2021. Claimant did not file a request for hearing until August 12, 2022. Accordingly, claimant's request for hearing was late.

Similarly, on June 3, 2022, the Department mailed decision # 145320 to claimant at claimant's address of record. The 20-day deadline for claimant to file a timely request for hearing on that decision was June 23, 2022. Claimant did not file a request for hearing until August 12, 2022. Accordingly, claimant's request for hearing was late.

In their appellant questionnaire response, claimant indicated that they did not receive decisions # 93111 and 145320. Exhibit 1 at 1. Further they filed their late requests for hearing when they did because they learned their overpayment waiver request had been denied because of claimant's former employer's report that claimant had voluntarily quit their job. Exhibit 1 at 1. Because claimant did not receive the administrative decisions, claimant's late requests for hearing may have been due to 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 develop the record to determine when, if ever, the factor beyond claimant's reasonable control arising from non-receipt of the decisions ceased to exist, and whether claimant's requests for hearing were filed within a seven-day "reasonable time" thereafter. To this end, for example, the ALJ should inquire whether claimant learned of the existence of decisions # 93111 and 145320 and their right to appeal those decisions when they received the overpayment bill, when they filed their waiver request, or when they learned the waiver request was denied. The ALJ should further inquire how much time elapsed between when these events occurred and when claimant filed the late requests for hearing on August 12, 2022.

Orders No. 22-UI-207872 and 22-UI-207873 therefore are reversed, and these matters remanded for hearings on whether claimant's late requests for hearing should be allowed, and if so, the merits of decisions # # 93111 and 145320.

DECISION: Orders No. 22-UI-207872 and 22-UI-207873 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: April 19, 2023

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 22-UI-207872 and 22-UI-207873 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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