

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0228

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On March 14, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work during the weeks including March 28, 2021 through September 4, 2021 (weeks 13-21 through 35-21) and was not eligible to receive unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 102720). On April 4, 2022, decision # 102720 became final without claimant having filed a request for hearing. On July 8, 2022, the Department served notice of an administrative decision, based in part on decision # 102720, concluding that claimant was paid benefits to which they were not entitled and assessing an overpayment of \$11,441 in regular unemployment insurance (regular UI) benefits, \$4,038 in Pandemic Emergency Unemployment Compensation (PEUC) benefits, and \$6,900 in Federal Pandemic Unemployment Compensation (FPUC) benefits (decision # 130211). On July 28, 2022, decision # 130211 became final without claimant having filed a request for hearing. On October 3, 2022, claimant filed late requests for hearing on decisions # 102720 and 130211.

ALJ Kangas considered claimant's request regarding decision # 102720, and on January 23, 2023 issued Order No. 23-UI-213418, dismissing claimant's request for hearing on decision # 102720 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 6, 2023. ALJ Kangas also considered claimant's request regarding decision # 130211, and on January 24, 2023 issued Order No. 23-UI-213464, dismissing claimant's request for hearing on decision # 130211 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 7, 2023. On February 10, 2023, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 23-UI-213418 and 23-UI-213646 with the Employment Appeals Board (EAB). On February 15, 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 either of the matters because claimant's questionnaire response was late. This matter comes before EAB based upon claimant's February 10, 2023 applications for review of Orders No. 23-UI-213418 and 23-UI-213646.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-213418 and 23-UI-213646. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0227 and 2023-EAB-0228).

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. 23-UI-213418 and 23-UI-213646 are set aside and these matters remanded for a hearing on whether claimant’s late requests for hearing on decisions # 102720 and 130211 should be allowed, and if so, the merits of those 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.

The deadline for claimant to file a timely request for hearing on decision # 102720 was April 4, 2022. Because claimant did not file a request for hearing on decision # 102720 until October 3, 2022, claimant’s request for hearing was late. The 20-day deadline for claimant to file a request for hearing on decision # 130211 was July 28, 2022. Because claimant did not file a request for hearing on decision # 130211 until October 3, 2022, claimant’s request for hearing was late.

In their appellant questionnaire response, claimant indicated that they received decision # 130211 on July 15 or 16, 2022, and timely filed a request for hearing to the Department, by mail, within a few days thereafter. EAB Exhibit 1 at 5. Claimant stated they heard nothing back, so on October 3, 2022, they filed a second request for hearing online. If claimant timely requested a hearing on decision # 130211 by mail but the appeal was not received or was ignored by the Department, the second request for hearing claimant filed on October 3, 2022, would have been late due to factors beyond claimant’s reasonable control. However, in claimant’s hearing referral form, claimant stated that they “[n]ever have received any letters showing notice of overpayment.” Exhibit 2 at 2. This appears to contradict claimant’s assertion that they received #130211 on July 15 or 16, 2022.

Also, in response to the appellant questionnaire question, “If you believe you had ‘good cause’ for filing your hearing requested (appeal) late, please explain why,” claimant stated, “I did not receive this document until after the 6th of February 2023.” EAB Exhibit 1 at 6. It is not clear whether this was meant to convey that claimant did not receive the orders under review in these cases until after February 6, 2023, or if it was instead meant to convey that claimant did not receive either decision # 130211 or decision # 102720 until after February 6, 2023. If the statement was intended to relate to decision # 130211, the statement would, like the hearing referral statement, appear to contradict claimant’s

assertion that they received decision # 130211 on July 15 or 16, 2022. If claimant's statement was meant to convey that they did not receive decision # 102720 until after February 6, 2023, claimant's late request for hearing on decision # 102720 may have been due to factors beyond their reasonable control. If so, clarification would be necessary to explain why claimant appealed the decisions on October 3, 2022 if they did not receive one or both of them until after February 6, 2023. In any event, further inquiry is needed to determine whether claimant had good cause to file the late requests for hearing for either or both administrative decisions, and whether claimant filed the late requests for hearing within a reasonable time.

On remand, the ALJ should develop the record to confirm whether claimant failed to receive either decision # 102720 or decision # 130211, and, if so, what prompted them to request hearings on the decisions on October 3, 2022. The ALJ should ask questions to clarify whether claimant received decision # 130211 on July 15 or 16, 2022 and filed a timely appeal on that decision by mail. Claimant also asserted in their appellant questionnaire response that they were under their doctor's care during the time period relevant to these appeals. EAB Exhibit 1 at 2. The ALJ should ask questions to develop whether the circumstances of claimant's medical condition was a factor beyond their reasonable control that prevented them from timely filing an appeal on either or both administrative decisions. To the extent that the record on remand shows that a circumstance beyond claimant's reasonable control prevented a timely filing on either or both administrative decisions, the ALJ should inquire when the factors (if any) ceased to exist, and, if so, whether claimant's October 3, 2022 requests for hearing were filed within a seven-day "reasonable time" thereafter.

Orders No. 23-UI-213418 and 23-UI-213646 therefore are reversed, and these matters remanded for a hearing on whether claimant's late requests for hearing should be allowed, and if so, the merits of decisions # 102720 and 130211.

DECISION: Orders No. 23-UI-213418 and 23-UI-213646 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: March 17, 2023

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 23-UI-213418 and 23-UI-213646 or return these matters to EAB. Only a timely application for review of the respective subsequent order will cause either of 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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