

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0264

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On February 25, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work during the week of May 17, 2020 through May 23, 2020 (week 21-20) and therefore was ineligible to receive unemployment insurance benefits for that week (decision # 103029). On March 17, 2021, decision # 103029 became final without claimant having filed a request for hearing. On March 30, 2022, the Department served notice of an administrative decision, based in part on decision # 103029, concluding that claimant received benefits to which they were not entitled and assessing an overpayment of \$1,094 in combined state and federal benefits that claimant was required to repay to the Department via offset of future benefits (decision # 150932). On April 19, 2022, decision # 150932 became final without claimant having filed a request for hearing. On May 12, 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 \$6,740 in combined state and federal benefits that claimant was required to repay to the Department via offset of future benefits (decision # 113339). On June 1, 2022, decision # 113339 became final without claimant having filed a request for hearing. On June 11, 2022, claimant filed late requests for hearing on decisions # 103029, 150932, and 113339.¹

ALJ Kangas considered claimant's requests, and on September 21, 2022 issued Orders No. 22-UI-203193, 22-UI-203192, and 22-UI-203195, dismissing claimant's requests for hearing on decisions # 103029, 150932, and 113339, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by October 5, 2022. On October 11, 2022, claimant filed a late

¹ Department records show that claimant's June 11, 2022 request for hearing was also construed to apply to another administrative decision, issued on February 25, 2021, which disqualified claimant from benefits on the basis that they voluntarily quit work without good cause (decision # 112650). That matter, under Case No. 22-UI-68084, has not yet been scheduled for a hearing. The overpayment created by decision # 113339 is based in part on decision # 112650. Because a ruling on the merits of decision # 112650 may affect the outcome of the merits on decision # 113339, the Office of Administrative Hearings (OAH) may wish to consolidate Case No. 22-UI-68084 with the other three cases at issue in this decision.

response to the appellant questionnaire and timely applications for review of Orders No. 22-UI-203193, 22-UI-203192, and 22-UI-203195 with the Employment Appeals Board (EAB). On February 27, 2023, ALJ Kangas mailed letters stating that 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 EAB based upon claimant's October 11, 2022 applications for review of Orders No. 22-UI-203193, 22-UI-203192, and 22-UI-203195.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-203193, 22-UI-203192, and 22-UI-203195. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2023-EAB-0265, 2023-EAB-0266, and 2023-EAB-0264).

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-203193, 22-UI-203192, and 22-UI-203195 are set aside and these matters remanded for hearings on whether claimant's late requests for hearing on decisions # 103029, 150932, and 113339 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 requests for hearing on decisions # 103029, 150932, and 113339 were due by March 17, 2021, April 19, 2022, and June 1, 2022, respectively. Because claimant did not file their requests for hearing on any of the administrative decisions until June 11, 2022, the requests were late.

On their appellant questionnaire response, claimant did not specifically indicate when they received or became aware of any of the three administrative decisions at issue, and did not identify a specific factor which prevented them from filing timely requests for hearing on any of those decisions. Nevertheless, claimant explained that they suffered from "confusion" due to "too many cases," and stated that they were "never made aware of any decisions or hearings." EAB Exhibit 1 at 3. If claimant never received, or otherwise was not made aware of, one or more of the administrative decisions at issue, claimant may have failed to file timely requests for hearing due to factors beyond their reasonable control. However, further information is needed to determine if claimant had good cause to file the late requests for hearing.

On remand, the ALJ should inquire as to when, if at all, claimant received or became aware of each of the three administrative decisions. The ALJ should also inquire as to whether claimant was unable to file timely requests for hearing due to factors beyond their reasonable control or an excusable mistake and, if so, when those factors ceased to exist.

Orders No. 22-UI-203193, 22-UI-203192, and 22-UI-203195 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 # 103029, 150932, and 113339.

DECISION: Orders No. 22-UI-203193, 22-UI-203192, and 22-UI-203195 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 10, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-203193, 22-UI-203192, and 22-UI-203195 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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