

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0277

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On April 20, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$15,990 overpayment of Pandemic Unemployment Assistance (PUA) benefits, a \$21,000 overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits, a \$1,800 overpayment of Lost Wages Assistance (LWA) benefits and a \$5,548.50 monetary penalty. On May 10, 2022, the April 20, 2022 administrative decision became final without claimant having filed a request for hearing. On June 9, 2022, claimant filed a late request for hearing on the April 20, 2022 administrative decision.

ALJ Kangas considered claimant's request, and on September 28, 2022 issued order 22-UI-203674, dismissing claimant's request for hearing on the April 20, 2022 administrative decision as late without a showing of good cause, subject to claimant's right to renew the request by responding to the appellant questionnaire by October 12, 2022. On October 18, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-203674 with the Employment Appeals Board (EAB). On January 14, 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 this matter because the questionnaire response was late. This matter comes before EAB based upon claimant's October 18, 2022 application for review of Order No. 22-UI-203674.

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 October 18, 2022 response to the appellant questionnaire, and has been 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(s) will remain in the record.

WRITTEN ARGUMENT: EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) On April 20, 2022, the Department mailed an administrative decision to claimant's address on file with the Department. This decision stated, "Any appeal from this decision must be filed on or before May 10, 2022 to be timely." Exhibit 1 at 1.

(2) Claimant did not receive the April 20, 2022 administrative decision. Claimant does not have a physical address and has their mail sent to Transition Projects, a community center. EAB Exhibit 1 at 3.

(3) On June 9, 2022, claimant received a bill from the Department, based on the April 20, 2022 overpayment administrative decision. Upon receiving this bill, claimant inquired with mail staff at Transition Projects regarding other potential mail from the Department, but was unable to determine if any other mail from the Department had arrived for claimant at Transition Projects. EAB Exhibit 1 at 3.

(4) On June 9, 2022, claimant filed a request for a hearing on the April 20, 2022 administrative decision.

CONCLUSIONS AND REASONS: Order No. 22-UI-203674 is reversed, claimant's late request for hearing is allowed, and a hearing on the merits of April 20, 2022 administrative decision is required.

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 April 20, 2022, the Department mailed the April 20, 2022 administrative decision 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 that decision was May 10, 2022. Claimant did not file a request for hearing on the April 20, 2022 administrative decision until June 9, 2022. Accordingly, claimant's request for hearing was late.

There is a presumption that a letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(1)(q). However, claimant has rebutted this presumption because they have provided evidence, via their response to the appellant questionnaire, that they did not receive the April 20, 2022 administrative decision. Claimant stated in this response, "I did not receive any requests for information, administrative decisions, determination, or anything else prior to the overpayment bill dated 5/9/2022, which I received on 6/9/2022." EAB Exhibit 1 at 3. Further, claimant elaborated that they do not have a physical address and have their mail sent to a local community center. Claimant spoke with staff at the community center who handle the mail after receiving the bill on June 9, 2022, but was unable to determine if the center ever received the April 20, 2022 administrative decision. Given claimant's statement that claimant never received the April 20, 2022 administrative decision, and the communal nature of claimant's mailing address, claimant has overcome the mailing presumption and claimant's firsthand account of non-receipt controls.

Accordingly, the record shows that claimant did not receive the April 20, 2022 administrative decision in the mail and did not learn of its existence until they received a bill from the Department on June 9, 2022. Claimant's failure to receive the April 20, 2022 administrative decision in the mail was a factor

beyond their reasonable control that prevented timely filing of their request for hearing. When claimant learned of the existence of the April 20, 2022 administrative decision on June 9, 2022, that factor ceased to exist. That same day, claimant filed a request for hearing. Claimant therefore filed their request for hearing within a seven-day reasonable time after the factor that prevented them from timely filing ceased to exist. As such, claimant established good cause to extend the deadline to file a request for hearing on the April 20, 2022 administrative decision to June 9, 2022. Claimant's late request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of the April 20, 2022 administrative decision.

DECISION: Order No. 22-UI-203674 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Serres and A. Steger-Bentz;
D. Hettle, not participating.

DATE of Service: March 17, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-203674 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this 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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