

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0316

Reversed
Late Requests for Hearing Allowed
Merits Hearings Required

PROCEDURAL HISTORY: On November 12, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving benefits effective April 5, 2020 (decision # 85748). On December 2, 2020, decision # 85748 became final without claimant having requested a hearing. On January 14, 2022, the Department served notice of an administrative decision based in part on decision # 85748, concluding that claimant received \$1,500 in regular unemployment insurance benefits and \$2,400 in Federal Pandemic Unemployment Compensation (FPUC) to which she was not entitled and must repay (decision # 161517). On February 3, 2022, decision # 161517 became final without claimant having requested a hearing.

On March 9, 2022, claimant filed late requests for hearing on decisions # 85748 and 161517. ALJ Kangas considered claimant's requests, and on September 1, 2022 issued Orders No. 22-UI-201882 and 22-UI-201881, dismissing claimant's requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by September 15, 2022. On September 9, 2022, claimant filed a timely response to the appellant questionnaire. On January 30, 2023, the Office of Administrative Hearings (OAH) mailed letters to the parties stating that Orders No. 22-UI-201882 and 22-UI-201881 were cancelled and that hearings would be scheduled to determine whether late requests for hearing should be allowed, and if so, the merits of decisions # 85748 and 161517. On February 21, 2023, ALJ Blam conducted hearings at which the employer failed to appear, and on February 28, 2023 issued Orders No. 23-UI-217433 and 23-UI-217434, re-dismissing claimant's requests for hearing as late without good cause and leaving decisions # 85748 and 161517 undisturbed. On March 15, 2023, claimant filed applications for review of Orders No. 23-UI-217433 and 23-UI-217434 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-217433 and 23-UI-217434. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0315 and 2023-EAB-0316).

WRITTEN ARGUMENT: EAB did not consider claimant’s written argument as to Order No. 23-217433 when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). However, EAB considered claimant’s argument as to Order No. 23-UI-217434.

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, 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 will remain in the record.

FINDINGS OF FACT: (1) Claimant filed an initial claim for unemployment insurance benefits on May 13, 2020, and last claimed benefits on July 15, 2020.¹

(2) Between July 16, 2020 and July 31, 2020, claimant moved from her address of record on file with the Department, but did not inform the Department of her new address.

(3) Decision # 85748, mailed to claimant’s address of record on file with the Department on November 12, 2020 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 December 2, 2020.” 2022-UI-66963 Exhibit 1 at 2. Claimant did not receive decision # 85748.

(4) Decision # 161517, mailed to claimant’s address of record on file with the Department on January 14, 2022 stated, “If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before February 3, 2022 to be timely.” 2022-UI-66965 Exhibit 1 at 2. Claimant did not receive decision # 161517.

(5) Claimant learned of decisions # 85748 and 161517 on approximately March 4, 2022 by receiving a billing statement regarding the overpayment, which led her to contact the Department, and was informed of the underlying administrative decisions at that time.

(6) On March 9, 2022, claimant filed requests for hearing on decisions # 85748 and 161517.

CONCLUSIONS AND REASONS: Claimant’s late requests for hearing on decisions # 85748 and 161517 are allowed, and hearings on the merits of decisions # 85748 and 161517 are 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

¹ EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). 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.

control or an excusable mistake, and defines “reasonable time” as seven days after those factors ceased to exist. It also provides that “good cause” does not include “[f]ailure 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[.]” OAR 471-040-0010(1)(b)(A).

On November 12, 2020, the Department mailed decision # 85748 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 December 2, 2020. Claimant did not file a request for hearing on decision # 85748 until March 9, 2022. On January 14, 2022, the Department mailed decision # 161517 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 February 3, 2022. Claimant did not file a request for hearing the administrative decisions until March 9, 2022. Accordingly, claimant’s requests for hearing were late.

The orders under review dismissed claimant’s late requests for hearing because they found that claimant’s failure to update her address with the Department, resulting in her failure to receive decisions # 85748 and 161517 and causing her requests for hearing to be late, did not constitute good cause to extend the 20-day deadline. Order No. 23-UI-217433 at 3; Order No. 23-UI-217434 at 4. The record does not support this conclusion.

Claimant’s requests for hearing were filed late because the Department mailed decisions # 85748 and 161517 to an address at which claimant no longer lived, causing her not to receive them. Department records show that claimant did not claim benefits after July 15, 2020. Claimant testified that she moved from the address on file with the Department in July 2020. February 21, 2023 1:30 p.m. Audio Record at 16:18 to 16:49. It can be inferred from the record that claimant moved sometime after July 15, 2020, as she testified that when she moved, she updated her address with other businesses and agencies who might send her mail, but that the thought of updating her address with the Department did not “even cross [her] mind,” which would likely have been the case only if she was no longer claiming benefits. February 21, 2023 1:30 p.m. Audio Record at 16:35 to 16:42. Therefore, claimant likely did not fail to update her address while claiming benefits, and her subsequent failure to update her address after she stopped claiming benefits was an excusable mistake. Claimant has therefore shown good cause to extend the deadline for filing the requests for hearing a “reasonable time.”

Claimant wrote in her appellant questionnaire response that she received decision # 161517 “around March 4, 2022.” EAB Exhibit 1 at 1. Claimant clarified in her testimony that she did not actually receive decision # 161517, but instead received a billing statement that alerted her to the overpayment, and further inquiry led to her discovery of the existence of decisions # 85748 and 161517. February 21, 2023 2:30 p.m. Audio Record at 12:04 to 12:45. The factor that prevented claimant from timely filing her requests for hearing therefore ceased no earlier than March 4, 2022, when she learned of decisions # 85748 and 161517. Claimant’s requests for hearing were filed March 9, 2022, which is within seven days of March 4, 2022, and the requests for hearing therefore were filed within a “reasonable time.” Accordingly, claimant’s late requests for hearing on decisions # 85748 and 161517 are allowed, and hearings on the merits of decisions # 85748 and 161517 are required.

DECISION: Orders No. 23-UI-217433 and 23-UI-217434 are set aside, and these matters remanded for hearings on the merits of decisions # 85748 and 161517.

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

DATE of Service: April 20, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 23-UI-217433 and 23-UI-217434 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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