

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0332

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On June 1, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to actively seek work from May 22 through 28, 2022 (week 21-22) and was not eligible for benefits for that week (decision # 80724). On June 8, 2022, the Department served notice of an administrative decision concluding that claimant failed to actively seek work from May 29 through June 4, 2022 (week 22-22) and was not eligible for benefits for that week (decision # 94443). On June 14, 2022, the Department served notice of an administrative decision concluding that claimed failed to actively seek work from June 5 through 11, 2022 (week 23-22), and was not eligible for benefits for that week (decision # 84358). On June 21, 2022, decision # 80724 became final without claimant having filed a request for hearing. On June 28, 2022, decision # 94443 became final without claimant having filed a request for hearing. On July 5, 2022, decision # 84358 became final without claimant having filed a request for hearing.

On July 21, 2022, claimant filed late requests for hearing on decisions # 80724, 94443, and 84358. ALJ Kangas considered claimant's request for hearing on decision # 94443, and on October 26, 2022 issued Order No. 22-UI-205895, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 9, 2022. ALJ Kangas also considered claimant's requests for hearing on decision # 80724 and 84358, and on October 27, 2022 issued Orders No. 22-UI-206019 and 22-UI-206025, dismissing the requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by November 10, 2022. On November 15, 2022,¹ claimant filed a late response to the appellant questionnaire and timely applications for

¹ Under OAR 471-041-0065(1)(b), the filing date of an application for review filed by mail is the date that the document is deposited in the United States mail in an envelope with first class postage, as evidenced by the postmark affixed to the envelope. Here, however, claimant filed their applications for review by mail but the envelope containing claimant's applications for review did not have a visible postmark. EAB Exhibit 1 at 6. Accordingly, the filing date is the date EAB determines to be the most probable date of filing. OAR 471-041-0065(2) ("Where the information specified in Section (1) of this rule is missing . . . the filing date is the date that EAB determines to be the most probable date of filing."). Because the envelope containing claimant's applications for review was marked received by OAH on November 21, 2022, and was mailed to OAH from claimant's address in Delano, California, the most probable date of filing was a postmark date of four business days before the envelope was received, which is November 15, 2022. See <https://www.usps.com/ship/first-class->

review of Orders No. 22-UI-206019, 22-UI-205895, and 22-UI-206025. On March 22, 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 the matters because the questionnaire response was late. These matters come before EAB based upon claimant's November 15, 2022 applications for review of Orders No. 22-UI-206019, 22-UI-205895, and 22-UI-206025.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-206019, 22-UI-205895, and 22-UI-206025. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0331, 2023-EAB-0329, and 2023-EAB-0332).

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-206019, 22-UI-205895, and 22-UI-206025 are set aside and these matters remanded for hearings on whether claimant's late requests for hearing on decisions # 80724, 94443, and 84358 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 request for hearing on decision # 80724 was due by June 21, 2022. Because claimant did not file their request for hearing until July 21, 2022, the request for hearing on decision # 80724 was late. The request for hearing on decision # 94443 was due by June 28, 2022. Because claimant did not file their request for hearing until July 21, 2022, the request for hearing on decision # 94443 was late. The request for hearing on decision # 84358 was due by July 5, 2022. Because claimant did not file their request for hearing until July 21, 2022, the request for hearing on decision # 84358 was late.

In their appellant questionnaire response, claimant stated that they believed they had good cause for filing the hearing requests late because "my notices came late and I didn't know to file these papers." EAB Exhibit 1 at 4. Similarly, where asked if there was anything claimant could have done to meet the deadlines to appeal, claimant answered, "Didn't receiving hearing papers until now." EAB Exhibit 1 at 4. If claimant received decisions # 80724, 94443, or 84358 late or not until the date claimant submitted the appellant questionnaire response, claimant's requests for hearing may have been late due to factors beyond claimant's reasonable control. However, further inquiry is needed to determine whether claimant

mail.htm (stating that first class domestic mail sent through the U.S. Postal Service is estimated to take 1-5 business days after mailing to be delivered). Therefore, the filing date was November 15, 2022.

had good cause to file the requests for hearing late, and whether they filed the late requests for hearing within a reasonable time. On remand, the ALJ should develop the record to confirm the precise dates on which claimant received decisions # 80724, 94443, and 84358, and whether claimant's requests for hearing were filed within a seven-day "reasonable time" thereafter. The ALJ should also ask any other questions necessary to determine whether a factor beyond claimant's reasonable control or an excusable mistake prevented timely filings, whether and when those factors (if any) ceased to exist, and whether claimant's July 21, 2022 requests for hearing were filed within a seven-day "reasonable time" thereafter.

Orders No. 22-UI-206019, 22-UI-205895, and 22-UI-206025 therefore are set aside, 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 # 80724, 94443, and 84358.

DECISION: Orders No. 22-UI-206019, 22-UI-205895, and 22-UI-206025 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: March 29, 2023

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 22-UI-206019, 22-UI-205895, or 22-UI-206025 or return any of 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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