

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0451

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On August 30, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had failed to register for work in accordance with the Department's rules and was ineligible for benefits from July 4 through 31, 2021 (weeks 27-21 through 30-21) and until the reason for the denial had ended (decision # 90824). On September 20, 2021, decision # 90824 became final without claimant having filed a request for hearing. On July 27, 2022, the Department served notice of an administrative decision based in part on decision # 90824, concluding that claimant received \$313 in Pandemic Emergency Unemployment Compensation (PEUC) and \$300 in Federal Pandemic Unemployment Compensation (FPUC) benefits to which they were not entitled and must repay (decision # 84147). On August 16, 2022, decision # 84147 became final without claimant having filed a request for hearing.

On September 22, 2022, claimant filed late requests for hearing on decisions # 90824 and 84147. ALJ Kangas considered the requests, and on January 10, 2023 issued Orders No. 23-UI-212159 and 23-UI-212158, dismissing the requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by January 24, 2023. On January 26, 2023, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 23-UI-212159 and 23-UI-212158 with the Employment Appeals Board (EAB). On April 13, 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 these matters because the questionnaire response was late. These matters come before EAB based upon claimant's January 26, 2023 applications for review of Orders No. 23-UI-212159 and 23-UI-212158.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-212159 and 23-UI-212158. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0450 and 2023-EAB-0451).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of 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) On August 30, 2021, the Department mailed decision # 90824 to claimant’s address on file with the Department. Decision # 90824 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 September 20, 2021.” Order No. 23-UI-212159, Exhibit 1 at 2.

(2) On July 27, 2022, the Department mailed decision # 84147 to claimant’s address on file with the Department. Decision # 84147 stated, “[Y]ou have the right to appeal this decision. Any appeal from this decision must be filed on or before August 16, 2022 to be timely.” Order No. 23-UI-212158, Exhibit 1 at 2.

(3) On September 22, 2022, claimant filed late requests for hearing on decisions # 90824 and 84147.

CONCLUSIONS AND REASONS: Claimant’s late requests for hearing are dismissed.

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 # 09824 and 84147 were due by September 20, 2021 and August 16, 2022, respectively. Because claimant did not file their requests for hearing on the decisions until September 22, 2022, the requests were late.

In their response to the appellant questionnaire, claimant stated that they received “the administrative decision” on July 27, 2022. EAB Exhibit 1 at 1. Claimant did not indicate which of the two administrative decisions in question they received that day or when they received the other of the two decisions. Claimant also stated that they did not file the requests for hearing prior to the applicable deadlines because “after [they] made the call, [they] did not receive a notification to proceed with the next steps for the hearing.” EAB Exhibit at 2. Further, claimant stated in their requests for hearing that they “did not request a hearing earlier because [the Department’s] system did not allow [claimant] to,” and that claimant attempted to contact the Department “to make an appeal but [they] kept running into errors on [the Department’s] end.” Exhibit 2 at 3.

These statements suggest that claimant might have failed to file timely requests for hearing due to errors in the Department's system, which may have constituted factors beyond their reasonable control. However, claimant provided no specifics regarding these errors, and did not describe any efforts they made to file timely requests for hearing prior to the respective deadlines for either decision. Therefore, claimant has not shown that they had good cause for failing to file timely requests for hearing.

Claimant also stated that they were prompted to file the requests for hearing when they did because they were "receiving mail stating that [they owed] money and it was overpaid[.]" EAB Exhibit 1 at 2. This statement suggests that claimant *was* able to file requests for hearing without issue, but did not do so until they realized that they owed money as a result of the overpayments assessed by decision # 84147. Although this was likely the result of a mistake on claimant's part, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Claimant's late requests for hearing on decisions # 09824 and 84147 therefore are dismissed under ORS 657.875 and OAR 471-040-0010.

DECISION: Orders No. 23-UI-212159 and 23-UI-212158 are affirmed.

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

DATE of Service: April 25, 2023

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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