

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0475

Reversed and Remanded

PROCEDURAL HISTORY: On August 5, 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 \$2,718 in Pandemic Emergency Unemployment Compensation (PEUC) that claimant was required to repay to the Department (decision # 153729). On August 25, 2022, decision # 153729 became final without claimant having filed a request for hearing.

On September 22, 2022, claimant filed a late request for hearing on decision # 153729. ALJ Kangas considered claimant's request, and on January 12, 2023 issued Order No. 23-UI-212413, dismissing claimant's request for hearing on decision # 153729 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 26, 2023. On January 31, 2023, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 23-UI-212413 with EAB. On April 10, 2023, ALJ Kangas mailed a letter to claimant stating that because the response to the appellant questionnaire was late, it would not be considered and another order would not be issued. This matter comes before EAB based upon claimant's January 31, 2023 application for review of Order No. 23-UI-212413.

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 screenshots of conversations between claimant and the Department, 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 May 20, 2021, the Department issued decision # 85651, concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective September 27, 2020. On June 9, 2021, decision # 85651 became final without claimant having filed a request for hearing. On June 11, 2021, claimant filed a late request for hearing on decision # 85651. ALJ Kangas considered claimant's request, and on August 25, 2021, issued Order No. 21-UI-173363 dismissing claimant's request for hearing as late without good

cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 8, 2021. Claimant has not filed a response to the appellant questionnaire or an application for review of Order No. 21-UI-173363 with EAB. On August 5, 2022, the Department assessed an overpayment of \$4,200, based in part on decision # 85651.¹

(2) On August 5, 2022, the Department mailed decision # 153729 to claimant's address of record on file with the Department. Decision # 153729 stated, "[Y]ou have the right to appeal this decision. Any appeal from this decision must be filed on or before August 25, 2022 to be timely." Exhibit 1 at 2.

(3) On September 22, 2022, claimant filed a request for hearing in which they disagreed with the conclusions of decision # 85651 regarding the work separation, and with "getting charged \$4,000" by the Department's assessment of an overpayment. Exhibit 2 at 2.

CONCLUSIONS AND REASONS: Order No. 23-UI-212413 is set aside and the matter remanded for a hearing to determine whether claimant had good cause for filing their late request for hearing on decision # 153729 and, if so, the merits of that decision.

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 deadline to file a timely request for hearing on decision # 153729 was August 25, 2022. Claimant filed their request for hearing on September 22, 2022. Therefore, the request for hearing was late. However, claimant may have had good cause to file their request for hearing late because the record suggests that claimant may not have received decision # 153729.

Claimant's responses to the appellant questionnaire indicate that claimant may not have understood the questions it posed, and further inquiry is therefore needed to determine whether claimant had good cause to file her late request for hearing. In the response to the appellant questionnaire, claimant stated that they received decision # 153729 on August 5, 2022. EAB Exhibit 1 at 1. As this was the date decision # 153729 was mailed, it is unlikely, and perhaps impossible, that claimant received decision # 153729 in the mail on that date. Further, claimant stated that they filed their request for hearing on decision # 153729 on June 11, 2021. EAB Exhibit 1 at 2. However, that date precedes the issuance of decision # 153729 by more than a year, and June 11, 2021, is the date claimant requested a hearing on decision # 85651. Claimant wrote that they were prompted to file their September 22, 2022 request for hearing because they "received a letter saying I owed all this money then I tried to look more into it." EAB Exhibit 1 at 2. Claimant referred to "this money" as \$4,000 in other documents. Exhibit 2 at 2, 4. However, the amount of the overpayment assessed in decision # 153729 is \$2,718. Department records show that a \$4,200 overpayment was assessed on August 5, 2022, the same day decision # 153729 was

¹ EAB has taken notice of information concerning decision # 85651, Order No. 21-UI-173363, and the \$4,200 overpayment which was contained in the Department's records. 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.

issued. It is therefore possible that claimant did not receive decision # 153729 and was not aware of the \$2,718 overpayment it assessed, or their appeal rights from the decision. If so, this may have constituted a factor outside of claimant's reasonable control that prevented them from timely filing a request for hearing on decision # 153729. However, further inquiry is needed to determine if claimant had good cause to file the late request for hearing.

On remand, the ALJ should inquire as to when, if at all, claimant received or otherwise learned about decision # 153729, claimant's right to appeal it, and any other factors that may have prevented claimant from filing a timely request for hearing. The ALJ also should inquire as to when those factors, if any, ceased to exist, and whether claimant filed their request within a reasonable time after any such factors ceased to exist. Additionally, inquiry should be made into whether claimant's September 22, 2022 request for hearing should have also been applied to the August 5, 2022 assessment of the \$4,200 overpayment.

Further, since it appears from claimant's response to the appellant questionnaire that they may have been unaware of the resolution of their June 11, 2021 request for hearing on decision # 85651 regarding the work separation, claimant may wish to inquire with OAH about Order No. 21-UI-173363 and their appeal rights from that decision.

Order No. 23-UI-212413 is therefore set aside, and this matter remanded for a hearing on whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 153729.

DECISION: Order No. 23-UI-212413 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: April 28, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-212413 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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