

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0540

Order No. 23-UI-222498 Reversed - Late Request for Hearing Allowed, Merits Hearing Required
Order No. 23-UI-222507 - Reversed and Remanded

PROCEDURAL HISTORY: On December 28, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work or available for work from May 24 through June 6, 2020 (weeks 22-20 through 23-20) and was not eligible for benefits for those weeks (decision # 74509). On January 19, 2021, decision # 74509 became final without claimant having filed a request for hearing. On February 24, 2022, the Department served notice of an administrative decision based in part on decision # 74509, concluding that claimant failed to disclose a material fact and therefore was overpaid \$642 in regular unemployment insurance (regular UI) and \$1,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant must repay (decision # 113529). On March 16, 2022, decision # 113529 became final without claimant having filed a request for hearing.

On March 27, 2022, claimant filed late requests for hearing on decisions # 74509 and 113529. ALJ Kangas considered claimant's requests, and on August 17, 2022 issued Orders No. 22-UI-200672 and 22-UI-200671, dismissing the requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by August 31, 2022. On August 27, 2022, claimant filed a timely response to the appellant questionnaire. On February 6, 2023, the Office of Administrative Hearings (OAH) mailed letters stating that Orders No. 22-UI-200672 and 22-UI-200671 were vacated and that new hearings would be scheduled to determine whether claimant's late requests for hearing should be allowed and, if so, the merits of decisions # 74509 and 113529. On April 11, 2023, ALJ Blam conducted hearings, and on April 19, 2023 issued Order No. 23-UI-222498 dismissing claimant's request for hearing on decision # 74509 as late without good cause, and Order No. 23-UI-222507 allowing claimant's late request for hearing on decision # 113529 and affirming that decision. On May 9, 2023, claimant filed applications for review of Orders No. 23-UI-222498 and 23-UI-222507 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-222498 and 23-UI-222507. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0539 and 2023-EAB-0540).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On June 2, 2020, claimant filed an initial claim for unemployment insurance benefits. In early June 2020, claimant claimed benefits for the weeks from May 24 through June 6, 2020 (weeks 22-20 through 23-20). These are the weeks at issue. The Department paid claimant regular UI and FPUC benefits for the weeks at issue. After claiming the weeks at issue, claimant stopped claiming benefits.

(2) Prior to December 20, 2020, claimant lived with his parents at an address in Beaverton, Oregon. On December 20, 2020, claimant moved from the Beaverton address to an address in Forest Grove, Oregon. Claimant's parents continued to live at the Beaverton address for a time.

(3) On December 28, 2020, the Department mailed decision # 74509 to claimant's address on file with the Department, which was the address in Beaverton. Decision # 74509 concluded that claimant was not able to work or available for work during the weeks at issue and was not eligible for benefits for those weeks. Decision # 74509 also 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 January 19, 2021." Order No. 23-UI-222498, Exhibit 1 at 2.

(4) Claimant did not receive decision # 74509. Claimant asked his parents for mail addressed to him that they received at the Beaverton address, and they gave him mail, but decision # 74509 was not among the mail claimant got from his parents. Claimant's parents continued to live at the Beaverton address until January 10, 2021. Thereafter, claimant's parents moved to a new address. Claimant requested the U.S. Postal Service forward his mail to his parents' new address. Claimant asked his parents for mail addressed to him that they received at their new address, and they gave him mail, but decision # 74509 was not among the mail claimant got from his parents.

(5) On February 24, 2022, the Department mailed decision # 113529 to claimant's address on file with the Department. Decision # 113529 concluded that claimant was liable for overpayments of the regular UI and FPUC benefits he received for the weeks at issue. Decision # 74509 stated, "you have the right to appeal this decision. Any appeal from this decision must be filed on or before March 16, 2022 to be timely." Order No. 23-UI-222507 Exhibit 1 at 2. Claimant did not receive decision # 113529.

(6) On March 23, 2022, claimant's mother informed him that the Department had sent claimant a letter. On March 26, 2022 claimant visited his parents, and reviewed the letter, which was a billing statement relating to the overpayment established by decision # 113529.

(7) On March 27, 2022, claimant used the Department's online portal to request hearings on decisions # 74509 and 113529. Claimant received a confirmation that the requests were received. However, for unknown reasons, the online portal was unable to complete the hearing request process. On April 15, 2022, claimant again used the Department's online portal to request hearings on decisions # 74509 and 113529. The portal successfully processed the April 15, 2022 hearing requests.

CONCLUSIONS AND REASONS: Order No. 23-UI-222498 is reversed and the matter remanded for a hearing on the merits of decision # 74509. Order No. 23-UI-222507 is set aside and the matter remanded for further development of the record.

Order No. 23-UI-222498 – Late Request for Hearing. 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 December 28, 2020, the Department mailed decision # 74509 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 January 19, 2021. Claimant did not file a request for hearing on decision # 74509 until March 27, 2022. Accordingly, claimant’s request for hearing was late.

Order No. 23-UI-222498 dismissed claimant’s late request for hearing on decision # 74509 because it concluded that claimant failed to show good cause to extend the deadline to March 27, 2022. Order No. 23-UI-222498 at 3. The record does not support this conclusion.

Claimant did not receive decision # 74509. On December 20, 2020, shortly before decision # 74509 was mailed, claimant moved away from the Beaverton residence he shared with his parents.¹ The Department then mailed the administrative decision to the Beaverton address on December 28, 2020. Claimant asked his parents for mail addressed to him that they received at the Beaverton address, and they gave him mail, but decision # 74509 was not among the mail claimant received from his parents. On January 10, 2021, claimant’s parents moved from the Beaverton address to a new address. Claimant requested the U.S. Postal Service forward his mail to his parents’ new address. Claimant asked his parents for mail addressed to him that they received at their new address, and they gave him mail, but decision # 74509 was not among the mail claimant received from his parents.

The record therefore suggests that decision # 74509 was either not delivered to the Beaverton address or not forwarded to claimant’s parents’ new address, or that claimant’s parents received decision # 74509 but failed to give the decision to claimant. In any of these scenarios, claimant’s failure to receive the administrative decision was a factor beyond his reasonable control that prevented him from requesting a hearing by the January 19, 2021 deadline. These circumstances likely continued until claimant made his late request for hearing on decision # 74509 on March 27, 2022. Claimant was prompted to file his late appeal on that date because, on March 26, 2022, he reviewed a billing statement relating to the overpayment established by decision # 113529. It is unlikely that the invoice caused the circumstances beyond claimant’s reasonable control to cease because the record does not show that the invoice placed claimant on notice of decision # 74509 or of his right to appeal that administrative decision. In any event, by filing his late appeal the day after reviewing the invoice, claimant either filed the request for

¹ Although claimant did not update his address with the Department at that time, failing to do so does not preclude claimant from establishing good cause for his late appeal. OAR 471-040-0010(1)(b)(A) specifies that good cause does not include “[f]ailure to receive a document due to not notifying the Employment Department . . . of an updated address while the person is claiming benefits[.]” Claimant last claimed benefits in early June 2020, so his failure to receive decision # 74509, mailed on December 28, 2020, was not because he failed to update his address while he was claiming benefits.

hearing while the factor beyond his control was ongoing or within a seven-day reasonable time after the factor preventing a timely filing ceased to exist. Accordingly, claimant established good cause to extend the deadline to file a request for hearing on decision # 74509 to March 27, 2022.

Claimant's late request for hearing on decision # 74509 therefore is allowed, and claimant is entitled to a hearing on the merits of that decision.

Order No. 23-UI-222507 – Late Request for Hearing and Overpayment. Based on a *de novo* review of the entire record in the case, and pursuant to ORS 657.275(2), the portion of Order No. 23-UI-222507 allowing claimant's late request for hearing on decision # 113529 is **adopted**.

Because the merits of decision # 74509 are to be decided on remand, and given that the merits of that administrative decision affect whether the overpayment established by decision # 113529 should be affirmed, Order No. 23-UI-222507 also is set aside and the matter remanded pending the outcome of the hearing on decision # 74509.

DECISION: Orders No. 23-UI-222498 and 23-UI-222507 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: June 2, 2023

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 23-UI-222498 or 23-UI-222507 or return these matters to EAB. Only timely applications for review of each respective subsequent order will cause either 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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