

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0619

Late Application for Review Allowed
Reversed & Remanded

PROCEDURAL HISTORY: On January 7, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving benefits effective May 9, 2021 (decision # 153220). On January 27, 2022, decision # 153220 became final without claimant having filed a request for hearing. On February 28, 2022, claimant filed a late request for hearing on decision # 153220. ALJ Kangas considered claimant's request, and on June 7, 2022 issued Order No. 22-UI-195514, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by June 21, 2022. On June 10, 2022, claimant filed a timely response to the appellant questionnaire. On July 22, 2022, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 22-UI-195514 was vacated and that a new hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # 153220.

On December 15, 2022, ALJ Clemons convened a hearing, but took no testimony. On December 16, 2022, ALJ Clemons issued Order No. 22-UI-210136, dismissing claimant's request for hearing on decision # 153220 due to claimant's apparent withdrawal of the hearing request, and leaving decision # 153220 undisturbed. On January 5, 2023, Order No. 22-UI-210136 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On May 11, 2023, claimant filed a late application for review of Order No. 22-UI-210136 with EAB.

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 written statement enclosed with the application for review, marked as EAB Exhibit 1; and two additional administrative decisions issued on January 7, 2022 and February 24, 2022, respectively, marked as EAB Exhibit 2. Under OAR 471-040-0090(1)(c), EAB has taken notice of the decisions included in EAB Exhibit 2, which are contained in Employment Department records. A copy of these exhibits have been provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1 or 2 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(s) will remain in the record.

WRITTEN ARGUMENT: EAB did not consider claimant's written argument, filed June 19, 2023, when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) On January 7, 2022, the Department mailed decision # 153220 to claimant's address on file with the Department. Decision # 153220 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 27, 2022." Exhibit 1 at 2. Decision # 153220 determined that claimant had voluntarily quit working for Carte Blanche Caterers without good cause and was therefore disqualified from receiving benefits effective May 9, 2021.

(2) Also on January 7, 2022, the Department served notice of decision # 150721, concluding that claimant had voluntarily quit working for Fedex Ground Package System without good cause, and was disqualified from receiving benefits effective December 13, 2020. EAB Exhibit 2 at 2.

(3) On January 27, 2022, decisions # 153220 and 150721 became final without claimant having filed a request for hearing on either decision.

(4) On February 24, 2022, the Department served notice of decision # 194441, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment that claimant was required to repay to the Department, a monetary penalty, and a penalty disqualification from future benefits. EAB Exhibit 2 at 6. The overpayment and penalties assessed by decision # 194441 were based, in part, on earnings from Mazzi's Restaurant, LLC that claimant had allegedly misreported, as well the disqualifications resulting from the voluntary quit decisions relating to Fedex Ground Package System and Carte Blanche Caterers. EAB Exhibit 2 at 7-8.

(5) On February 28, 2022, claimant filed a request for hearing. The request for hearing did not specify which administrative decision(s) he wished to appeal. The Department initially construed this as a late request for hearing on decision # 153220, regarding Carte Blanche Caterers.

(6) On December 15, 2022, ALJ Clemons convened a hearing. Prior to taking testimony, the ALJ, claimant, and the Department's witness discussed procedural matters regarding which administrative decision claimant had intended to appeal. Claimant initially stated that he had not intended to file a request for hearing on the decision regarding his separation from Carte Blanche Caterers, but that he had intended to file an appeal regarding the decision relating to "Mazzi," an Italian restaurant he had been working for. Audio Record at 10:20. Claimant further explained that he had intended to file an appeal on the overpayment decision, which included Mazzi. Audio Record at 18:26. Afterwards, the Department witness explained that while the overpayment decision included three employers, Carte Blanche was not one of those employers. Audio Record at 18:47. Based on claimant's statements that he intended to file an appeal on the overpayment decision and not the separation from Carte Blanche Caterers, the ALJ dismissed claimant's request for hearing as a withdrawal without taking any testimony. Audio Record at 22:30. Claimant did not object to this dismissal at hearing.

(7) Order No. 22-UI-210136, mailed to claimant on December 16, 2022, stated, “You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed.” Order No. 22-UI-210136 at 1. Order No. 22-UI-210136 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before January 5, 2023 to be timely.”

(8) On June 6, 2023, a hearing was held on decision # 150721, regarding claimant’s separation from Fedex Ground Package System. On June 15, 2023, ALJ S. Lee issued Order No. 23-UI-228035, reversing decision # 150721 by concluding that claimant voluntarily quit work with good cause, and was not disqualified from receiving benefits based on the work separation. Although a hearing on decision # 194441, regarding claimant’s overpayment, was also scheduled for June 6, 2023, a hearing on that decision has not been held as of the date of this decision.¹

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 22-UI-210136 is allowed. This matter is remanded for a hearing on whether claimant had good cause to file the late request for hearing on decision # 153220 and, if so, the merits of that decision.

Late application for review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Order No. 22-UI-210136 was due January 5, 2023. Because claimant did not file his application for review until May 11, 2023, the application for review was late. On a statement enclosed with his application for review, claimant stated that his “case was closed unbeknownst to” him. EAB Exhibit 1 at 2. Claimant further stated he was “under the impression given to [him]... that [he] would be contacted for a redo hearing with the correct parties present.” EAB Exhibit 1 at 2.

Claimant’s statements here, when viewed in light of the discussions held at the hearing, suggest that claimant did not understand the implications of withdrawing his request for hearing on decision # 153220, regarding his separation from Carte Blanche Caterers. Further, the Department’s witness incorrectly stated that Carte Blanche Caterers was not included on the overpayment decision that claimant had intended to appeal. In fact, the record shows that claimant’s separation from Carte Blanche Caterers was one of the factors which contributed to the overpayment and penalties assessed by the overpayment decision. This misinformation was not corrected at hearing by either the ALJ or the Department’s witness. Additionally, the record does not show that claimant was advised that

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). 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.

withdrawing his hearing request on decision # 153220 would lead to that decision becoming final, or that its conclusion that he was disqualified from receiving benefits could contribute to a conclusion that, as a matter of law, he was overpaid benefits. It stands to reason that if claimant was given correct information regarding which employers were included on the overpayment decision, or advised of the ramifications of withdrawing his hearing request, he would not have withdrawn the request.

It is not clear what caused claimant to file the application for review when he did. However, claimant also stated that he while he had originally received a bill from the Department for \$1,406 in April 2021, he received a bill on the date that he filed the application for review that had “ballooned into over \$21,000,” and did not understand why he owed that sum. EAB Exhibit 1 at 3.

The combined effect of claimant’s statements, and the discussions held at hearing, indicate that more likely than not claimant was too confused by the process and the misinformation provided to him that he relied upon to file a timely application for review. Because claimant’s confusion stemmed in part from his reasonable reliance on the incorrect information provided by the Department’s witness, claimant failed to file a timely application for review due to factors beyond his reasonable control. These factors persisted until claimant received the bill for \$21,000 on May 11, 2023, at which point he apparently recognized that his appeal had not proceeded as he had intended. Because claimant filed the application for review the same day, claimant filed it within the seven-day “reasonable time” period after the factors which prevented the timely filing ceased. Claimant’s late application for review is therefore allowed.

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.

An administrative law judge may order that a request for hearing be dismissed upon request from the appellant to withdraw the request for hearing. OAR 471-040-0035(1) (August 4, 2004).

The request for hearing on decision # 153220 was due by January 27, 2022. Because claimant did not file his request for hearing until February 28, 2022, the request was late.

Because claimant stated that he had intended to request a hearing on the overpayment decision, rather than decision # 153220, the ALJ dismissed claimant’s request for hearing and did not proceed to take testimony regarding either the late request for hearing on decision # 153220 or the merits of that decision. This dismissal of claimant’s request was improper. First, although claimant’s statements at hearing suggested that he wished to appeal a decision other than decision # 153220, claimant did not explicitly state that he wished to withdraw his request for hearing. Such a request is necessary in order for an ALJ to dismiss a request for hearing under OAR 471-040-0035(1). Second, even if claimant had explicitly requested to withdraw his hearing request, such a request must, as discussed above, be considered in light of the incorrect information that the Department’s witness provided at hearing.

Because claimant did not actually request a withdrawal of his hearing request, and because claimant’s implied acceptance of the dismissal at hearing was premised on incorrect information that he received,

Order No. 22-UI-210136 is reversed, and this matter remanded for a hearing on whether claimant had good cause to file the late request for hearing on decision # 153220 and, if so, the merits of that decision.

DECISION: Claimant's late application for review of Order No. 22-UI-210136 is allowed. Order No. 22-UI-210136 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: June 21, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-210136 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

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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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