

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0759

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On May 25, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide to the Department information regarding whether they worked or earned wages during the week of May 8 through 14, 2022 (week 19-22) and was not eligible for benefits for that week. On June 14, 2022, the May 25, 2022 administrative decision became final without claimant having filed a request for hearing. On August 4, 2022, the Department served notice of an administrative decision concluding that claimant had failed to participate in a Reemployment and Eligibility Assessment (REA) as required, and was not eligible for benefits for the week of July 17 through 23, 2022 (week 29-22) and until the reason for the denial had ended. On August 18, 2022, claimant filed a late request for hearing on the May 25, 2022 administrative decision. On August 24, 2022, the August 4, 2022 administrative decision became final without claimant having filed a request for hearing. On August 25, 2022, claimant filed a late request for hearing on the August 4, 2022 administrative decision.

ALJ Kangas considered claimant's late requests for hearing, and on November 28, 2022 issued Orders No. 22-UI-208243 and 22-UI-208244, dismissing the requests as late, subject to claimant's right to renew the requests by responding to appellant questionnaires by December 12, 2022. On December 14, 2022, claimant filed late responses to the appellant questionnaires and timely applications for review of Orders No. 22-UI-208243 and 22-UI-208244 with the Employment Appeals Board (EAB). On July 18, 2023, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire responses or issue additional orders regarding these matters because the questionnaire responses were late. These matters come before EAB based upon claimant's December 14, 2022 applications for review of Orders No. 22-UI-208243 and 22-UI-208244.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-208243 and 22-UI-208244. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0759 and 2023-EAB-0760).

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 responses to the appellant questionnaires, 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-208243 and 22-UI-208244 are set aside and these matters remanded for a hearing on whether claimant’s late requests for hearing on the May 25, 2022 administrative decision or the August 4, 2022 administrative decision 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. Under OAR 471-040-0010(1)(b)(A), “good cause” does not include failure to receive a document due to not notifying the Department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal.

The requests for hearing on the May 25, 2022 administrative decision and the August 4, 2022 administrative decisions were due by June 14, 2022 and August 24, 2022, respectively. Because claimant did not file their requests for hearing until August 18, 2022 and August 25, 2022, respectively, the requests were late.

In their appellant questionnaire response relating to the May 25, 2022 administrative decision, claimant indicated that they never received a copy of the decision, and further stated that they were prompted to file their hearing request on that decision “when [they were] made aware” of it. EAB Exhibit 1 at 1–2. Similarly, in their appellant questionnaire response relating to the August 4, 2022 administrative decision, claimant indicated that they did not receive that decision, and “knew something wasn’t right when deposits stopped.” EAB Exhibit 1 at 3. Claimant elaborated that they “only found out [about the August 4, 2022 administrative decision] after [they] called to find out why [they weren’t] getting paid for over 6 weeks.” EAB Exhibit 1 at 4.

If claimant did not receive either of the administrative decisions, they may have failed to file timely requests for hearing due to factors beyond their reasonable control. However, further information is necessary to determine whether they had good cause to file the late requests for hearing. On remand, the ALJ should inquire as to whether claimant had trouble receiving mail at the time the administrative decisions were mailed to them, whether the decisions were mailed to the correct address and, to the extent they were not, whether they were mailed to an incorrect address because claimant had failed to update their address with the Department while they were claiming benefits or knew or should have known of a pending appeal. Further, the ALJ should inquire as to when and how claimant learned of

each of the decisions, and whether claimant filed the late requests for hearing within the seven-day “reasonable time” period.

Orders No. 22-UI-208243 and 22-UI-208244 therefore are reversed, and these matters remanded for a hearing on whether claimant’s late requests for hearing should be allowed and, if so, the merits of the May 25, 2022 administrative decision and the August 4, 2022 administrative decision.

DECISION: Orders No. 22-UI-208243 and 22-UI-208244 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: July 20, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-208243 and 22-UI-208244 or return 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

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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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