

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0765

Order No. 22-UI-209426 ~ Reversed & Remanded
Order No. 22-UI-209425 ~ Reversed
Late Request for Hearing Allowed ~ Decision # 93416 ~ Merits Hearing Required

PROCEDURAL HISTORY AND FINDINGS OF FACT: On February 9, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not actively seeking work during the weeks including November 28, 2021 through January 8, 2022 (weeks 48-21 through 01-22) and was therefore ineligible to receive unemployment insurance benefits during those weeks (decision # 140805). On March 1, 2022, decision # 140805 became final without claimant having filed a request for hearing. On July 15, 2022, the Department served notice of an administrative decision, based in part on decision # 140805, concluding that claimant received benefits to which they were not entitled and assessing an overpayment of \$1,045 in regular unemployment insurance benefits that claimant was required to repay to the Department (decision # 93416). On August 4, 2022, decision # 93416 became final without claimant having filed a request for hearing. On September 1, 2022, claimant filed late requests for hearing on decisions # 140805 and 93416.

ALJ Kangas considered claimant's requests, and on December 9, 2022 issued Orders No. 22-UI-209426 and 22-UI-209425, dismissing claimant's requests for hearing as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by December 23, 2022. On December 28, 2022, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 22-UI-209426 and 22-UI-209425 with the Employment Appeals Board (EAB). On July 19, 2023, ALJ Kangas mailed letters to claimant stating that because the response to the appellant questionnaire was late, it would not be considered and new orders would not be issued. These matters come before EAB based upon claimant's September 1, 2022 applications for review of Orders No. 22-UI-209426 and 22-UI-209425.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-209426 and 22-UI-209425. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0764 and 2023-EAB-0765).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is 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.

CONCLUSIONS AND REASONS: Order No. 22-UI-209426 is set aside and the matter remanded for a hearing on whether claimant’s late request for hearing on decision # 140805 should be allowed and, if so, the merits of decision # 140805. Order No. 22-UI-209425 is set aside. Claimant’s late request for hearing on decision # 93416 is allowed and a hearing on the merits of decision # 93416 is required.

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.

Late Request for Hearing on Decision # 140805. The deadline to file a timely request for hearing on decision # 140805 was March 1, 2022. Claimant filed their request for hearing on September 1, 2022. Therefore, the request for hearing was late. However, claimant may have had good cause to file the request for hearing late because the record shows that claimant might not have received a copy of decision # 140805 prior to the decision becoming final.

The information that claimant provided in their appellant questionnaire response suggests that they may not have received or been aware of decision # 140805. In their response, claimant only referenced receiving an envelope “dated July 15, 2022,” which contained decision # 93416. EAB Exhibit 1 at 1. Therefore, the record does not establish when, or if, claimant received decision # 140805. If claimant did not receive decision # 140805 and was unaware of the decision or their appeal rights prior to the decision becoming final, this may have constituted a factor outside claimant’s reasonable control that prevented them from timely filing their request for hearing. Claimant further states that they were “not well or checking [their] mail regularly due to having long term COVID symptoms of fatigue and brain fog.” EAB Exhibit 1 at 2. This may also have contributed to claimant not receiving decision # 140805, or not learning of it until after it became final. However, further inquiry is needed to determine if claimant had good cause to file the late request for hearing on decision # 140805.

On remand, the ALJ should inquire as to when, if at all, claimant received or otherwise learned about decision # 140805, claimant’s right to appeal it, and any other factors that may have prevented claimant from filing a timely request for hearing on that decision. The ALJ also should inquire as to when those factors, if any, ceased to exist, and whether claimant filed their request for hearing on decision # 140805 within a reasonable time after any such factors ceased to exist.

Late Request for Hearing on Decision # 93416. The deadline to file a timely request for hearing on decision # 93416 was August 4, 2022. Claimant filed their request for hearing on September 1, 2022.

Therefore, the request for hearing was late. However, the overpayment assessed in decision # 93416 is premised on decision # 140805 having become final. As decision # 140805 is no longer final since it is being remanded for further proceedings, it cannot yet be determined whether claimant, as a matter of law, has been overpaid benefits. The uncertainty concerning the ongoing appeal of decision # 140805, under these circumstances, constituted a factor outside of claimant's reasonable control that delayed timely filing of the request for hearing on decision # 93416 until it was filed along with the request for hearing on decision # 140805. The request for hearing on decision # 93416 was therefore filed within a reasonable time of the factor ceasing. Accordingly, Order No. 22-UI-209425 is reversed, claimant's late request for hearing on decision # 93416 is allowed, and the matter remanded for a hearing on the merits of decision # 93416, pending resolution of the remand hearing on decision # 140805.

For these reasons, Order No. 22-UI-209426 is set aside and the matter remanded for a hearing on whether claimant's late request for hearing on decision # 140805 should be allowed and, if so, the merits of decision # 140805. Order No. 22-UI-209425 is also set aside. Claimant's late request for hearing on decision # 93416 is allowed and a hearing on the merits of decision # 93416 is required.

DECISION: Orders No. 22-UI-209426 and 22-UI-209425 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 21, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-209426 and 22-UI-209425 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

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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