

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0803

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On July 6, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work for the weeks including May 30, 2021 through June 26, 2021 (weeks 22-21 through 25-21) and therefore was not eligible to receive unemployment insurance benefits for those weeks and until the reason for the denial ended (decision # 73645). On July 26, 2021, decision # 73645 became final without claimant having filed a request for hearing. On July 20, 2022, the Department served notice of an administrative decision, based in part on decision # 73645, concluding that claimant received \$1,546 in regular unemployment insurance (regular UI) benefits and \$1,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits to which they were not entitled and were required to repay to the Department (decision # 150935). On August 9, 2022, decision # 150935 became final without claimant having filed a request for hearing. On September 14, 2022, claimant filed late requests for hearing on decisions # 73645 and 150935.

ALJ Kangas considered claimant's requests, and on December 28, 2022 issued Orders No. 22-UI-211121 and 22-UI-211119, dismissing claimant's requests for hearing as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by January 11, 2023. On January 13, 2023, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 22-UI-211121 and 22-UI-211119 with the Employment Appeals Board (EAB). On July 26 and 27, 2023, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue additional orders regarding the matters because the questionnaire response was late. These matters come before EAB based upon claimant's January 13, 2023 application for review of Orders No. 22-UI-211121 and 22-UI-211119.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-211121 and 22-UI-211119. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0803 and 2023-EAB-0804).

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, 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-211121 and 22-UI-211119 are set aside and these matters remanded for a hearing on whether claimant's late requests for hearing on decisions # 73645 and 150935 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.

The request for hearing on decision # 73645 was due by July 26, 2021. The request for hearing on decision # 150935 was due by August 9, 2022. Because claimant did not file their requests for hearing on decisions # 73645 and 150935 until September 14, 2022, the requests were late.

In their appellant questionnaire response, claimant indicated that they did not know when they received the administrative decisions or when they filed their requests for hearing, but attributed filing the requests late to "dealing with the loss of family members and [being] mentally and emotionally checked out." EAB Exhibit 1 at 1-2. Claimant also stated that there was nothing they could do to meet the hearing request deadlines "due to [their] dad passing" and "making family funeral arrangements, burial arrangements" as well as "grieving the loss of dad & family." EAB Exhibit 1 at 2. Claimant stated they believed they had good cause for filing the hearing requests late because they were "dealing with the loss of [their] dad, and was going thru other family member's passing as well." EAB Exhibit 1 at 2.

If claimant was preoccupied with making arrangements for their deceased father and suffering from grief such that it was not possible to make timely requests for hearing, claimant's late hearing requests may have been due to factors beyond their reasonable control. However, further inquiry is needed to determine whether claimant had good cause to file the late requests for hearing, and whether they filed the late requests for hearing within a reasonable time. On remand, the ALJ should develop the record to confirm if and when claimant received and read decisions # 73645 and 150935 and, if they were received, whether claimant's requests for hearing were filed within a seven-day "reasonable time" after their receipt. The ALJ should ask questions to determine when claimant's father died and to what extent making funeral arrangements for their father (or carrying out any other responsibilities relating to their father's affairs) interfered with or delayed claimant's ability to file timely appeals of decisions # 73645 and 150935. The ALJ should also inquire about the nature and severity of claimant's mental and emotional challenges following their father's death and the deaths of other family members, and how these challenges affected his ability to request a hearing on time. To the extent the record on remand shows that the circumstances arising from claimant's father's death and the deaths of other family members constituted a factor beyond claimant's control or an excusable mistake that prevented a timely filing, the ALJ should ask questions to develop if and when those factors ceased to exist, and, if they

did, whether claimant's September 14, 2022 requests for hearing were filed within a seven-day "reasonable time" thereafter.

Orders No. 22-UI-211121 and 22-UI-211119 are therefore 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 decisions # 73645 and 150935.

DECISION: Orders No. 22-UI-211121 and 22-UI-211119 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: July 31, 2023

NOTE: The failure of any party to appear at the hearing(s) on remand will not reinstate Orders No. 22-UI-211121 and 22-UI-211119 or return these matters to EAB. Only a timely application for review of the applicable subsequent order(s) will cause the applicable matter(s) 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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