

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0847

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On October 11, 2022, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report (WPBR) concluding that claimant had sufficient earnings to establish a monetarily valid regular unemployment (regular UI) claim with a weekly benefit amount of \$288, subject to modification if and when additional information regarding federal wages earned during the base period was received from the federal government. On October 28, 2022, the Department served notice of an administrative decision concluding that federal wages earned by claimant during claimant’s base period would not be added to their claim and that the October 11, 2022 WPBR would therefore not be changed.¹ On November 7, 2022, the October 28, 2022 administrative decision became final without claimant having filed a request for hearing. On November 8, 2022, claimant filed a late request for hearing on the October 28, 2022 administrative decision.

ALJ Kangas considered claimant’s request, and on March 9, 2023 issued Order No. 23-UI-218467, dismissing claimant’s request for hearing as late, subject to claimant’s right to renew the request by responding to an appellant questionnaire by March 23, 2023. On March 23, 2023, claimant filed a timely response to the appellant questionnaire. ALJ Kangas considered claimant’s response, and on July 19, 2023 issued Order No. 23-UI-230793, cancelling Order No. 23-UI-218467, and re-dismissing claimant’s request for hearing as late without a showing of good cause. On August 2, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant’s argument in reaching this decision.

FINDINGS OF FACT: (1) On October 11, 2022, the Department mailed the WPBR to claimant, which stated, “Wage credits have been requested from another state or federal agency and you will be advised

¹ As explained in greater detail below, the October 28, 2022 administrative decision constituted an “amended determination” of the October 11, 2022 WPBR, and therefore claimant had ten days from the date of mailing of the October 28, 2022 administrative decision in which to file a request for hearing. *See* ORS 657.266.

when they are received.” Exhibit 1 at 2. It also stated, “This report becomes final unless you request redetermination of the report or request a hearing within 10 days.” Exhibit 1 at 1.

(2) On October 28, 2022, the Department mailed an administrative decision to claimant’s mailing address of record stating that federal wages would not be added to their claim and the October 11, 2022 WPBR would therefore “stay the same.” Exhibit 1 at 2. This administrative decision did not state that claimant had the right to request redetermination of it or to request a hearing. Claimant received this administrative decision “about three weeks” after they received the October 11, 2022 WPBR, which would have been approximately November 3, 2022. Exhibit 3 at 1.

(3) On November 7, 2022, claimant sent a message to the Department via their website “to get help understanding the [October 28, 2022 administrative decision] and how to explore my options.” Exhibit 3 at 1.

(4) On November 8, 2022, claimant filed a request for hearing on the October 28, 2022 administrative decision because claimant disagreed with the Department’s decision not to include federal wages in the claim.

CONCLUSIONS AND REASONS: Order No. 23-UI-230793 is reversed, and the matter remanded for a hearing on the merits of the October 28, 2022 administrative decision which excluded claimant’s federal wages from being used in their claim.

ORS 657.266 provides:

(1) An authorized representative shall promptly examine each new claim for benefits and, on the basis of information available, determine the total amount of wages paid to the claimant during the base year and whether or not such amount is sufficient to qualify the claimant for benefits and, if so, the weekly benefit amount payable to the claimant, the maximum amount payable with respect to such benefit year and the maximum duration thereof. The initial determination under this section shall be applicable to all weeks of the benefit year respecting which the claim was filed; however, such determination may be amended with respect to any week or weeks of the benefit year.

(2) The Director of the Employment Department shall promptly give notice of an initial determination under this section to the claimant and to any employers that have paid wages to the claimant during the base year. Initial notice to a base-year employer shall include notice of the potential charges to the employer’s account under ORS 657.471.

(3) The director shall promptly give notice of an amended determination under this section to the claimant and to all employers that have paid wages to the claimant during the base year and that are affected by the amended determination.

(4) An initial or amended determination may be canceled by the claimant at any time even though final, providing no disqualification has been assessed, no appeal of a disqualification or denial has been requested by the claimant nor benefits paid on such claim.

(5) Unless the claimant or a base-year employer files a request for hearing on the initial or amended determination with the director, the determination shall become final and the Employment Department shall pay or deny benefits in accordance with the determination, unless otherwise provided by law. The request for hearing must be filed not later than 10 days after the delivery of the initial or amended determination unless the Employment Department mails the determination, in which case the request for hearing must be filed not later than 10 days after the date the determination is mailed to the last-known address of the claimant and the base-year employer.

ORS 657.875 provides, “The period within which an interested party may request a hearing . . . as provided in ORS 657.266 . . . may be extended, upon a showing of good cause therefor, a reasonable time under the circumstances of each particular case.” 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 order under review applied claimant’s request for hearing to the October 11, 2022 WPBR and concluded that claimant’s request for hearing was not timely because it was not filed within ten days of October 11, 2022. Order No. 23-UI-230793 at 2. The record does not support that claimant requested a hearing on the October 11, 2022 WPBR, but instead shows that they requested a hearing on the October 28, 2022 administrative decision, and that the deadline for requesting a hearing on that decision was November 7, 2022. Further, the order under review concluded that claimant did not show that an excusable mistake prevented them from filing their appeal on time. Order No. 23-UI-230793 at 2. The record does not support this conclusion.

The initial WPBR was mailed to claimant on October 11, 2022. It stated that information on federal wages had been requested and that claimant “will be advised when they are received.” Because the administrative decision mailed on October 28, 2022 advised claimant that the federal wage information was received and that the wages would not be added, it effectively constituted an “amended determination” of the October 11, 2022 WPBR by determining that federal wages could not be used in the claim, whereas the initial WPBR explicitly declined to make such a determination. Therefore, to be timely, a request for hearing had to be filed within 10 days of the October 28, 2022 mailing of the amended determination, which was November 7, 2022. Claimant filed their request for hearing on the amended determination on November 8, 2022. Accordingly, the request for hearing was late.

While the October 11, 2022 WPBR stated that claimant had the right to request a hearing within 10 days, it also stated that the Department would advise claimant separately about whether federal wages would be added to the claim, and therefore claimant had no reason to disagree with that WPBR and he did not request a hearing on it. However, when the October 28, 2022 amended determination was issued excluding federal wages from use in the claim, claimant disagreed with that determination. Claimant wrote in their appellant questionnaire response that they contacted the Department via their website on November 7, 2022 to find out what their “options” were with regard to the October 28, 2022 amended determination. Exhibit 3 at 1. Because the October 11, 2022 WPBR explained claimant’s right to request a hearing if they disagreed with the WPBR, claimant’s confusion at the October 28, 2022 amended determination containing no such statement regarding appeal rights is understandable.

It can be inferred that claimant failed to file a request for hearing until November 8, 2022 because claimant was mistaken as to whether they had the right to request a hearing on the October 28, 2022 amended determination and, if so, whether such a request needed to be made within 10 days of the mailing of that determination. However, as these mistakes were the result of inadequate notice given by the Department of claimant's appeal rights, the mistakes were excusable. The factors that prevented claimant from filing their request for hearing ceased only when claimant filed their request for hearing on November 8, 2022, and therefore the request was filed within a "reasonable time." Accordingly, claimant's late request for hearing is allowed, and a hearing on the merits of the October 28, 2022 administrative decision is required.

DECISION: Order No. 23-UI-230793 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: September 13, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-230793 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

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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