

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0849

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY FINDINGS OF FACT: On July 2, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received \$1,800 of Lost Wages Assistance (LWA) benefits to which they were not entitled and was therefore liable to repay the Department (decision # 0444267). On July 22, 2021, decision # 0444267 became final without claimant having filed a request for hearing. On October 14, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on October 21, 2021, issued Order No. 21-UI-177742, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 4, 2021. On November 9, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-177742 with the Employment Appeals Board (EAB). On July 31, 2023, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late. This matter comes before EAB based upon claimant's November 9, 2021 application for review of Order No 21-UI-177742.

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, which claimant answered primarily in Vietnamese and has been considered along with an English translation. The response and English translation have 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. 21-UI-177742 is reversed and this matter remanded for a hearing on the merits of decision # 0444267.

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 # 0444267 was due by July 22, 2021. Because claimant did not file their request for hearing until October 14, 2021, the request was late.

In claimant's appellant questionnaire response, claimant stated that they received decision # 0444267 on October 13, 2021 and filed their request for hearing the next day, October 14, 2021. EAB Exhibit 1 at 1; 3. Claimant also stated, somewhat contradictorily, that they did not request a hearing before July 22, 2021 because they did not know English and thought decision # 0444267 was "just another employment insurance letter." EAB Exhibit 1 at 2; 3. Claimant asserted that they believed they had good cause because "I did not receive any letter and I do not know English so I did not know what it was about." EAB Exhibit 1 at 2; 3.

Claimant established good cause to extend the deadline to request a hearing on decision # 0444267 and filed their request within a reasonable time. To the extent claimant did not receive the administrative decision until October 13, 2021, a factor beyond their reasonable control prevented them from filing by the July 22, 2021 deadline because as of the deadline, claimant was not in possession of the decision and could not have been aware of it or of their right to appeal. Given that claimant then filed their appeal the very next day, October 14, 2021, the request for hearing was filed within a seven-day "reasonable time".

Claimant also established good cause if, as some of claimant's latter responses to the appellant questionnaire suggest, claimant instead received decision # 0444267 at some point soon after July 2, 2021 but did not recognize the decision for what it was because claimant did not know English. Review of decision # 0444267 shows that it was written in English and Spanish without any Vietnamese translation. Exhibit 1 at 1-2. It was beyond claimant's reasonable control to become aware of the substance of decision # 0444267 and the deadline to appeal the decision given that it was not written in a language claimant could understand. *See* OAR 471-040-0010(2) ("[G]ood cause for failing to file a timely request for hearing shall exist when the appellant provides satisfactory evidence that the Employment Department failed to follow its own policies with respect to providing service to a limited English proficient person, including the failure to communicate orally or in writing in a language that could be understood by the limited English proficient person[.]"). More likely than not, the factor beyond claimant's control ceased on October 14, 2021. On that day, claimant filed a late request for hearing on decision # 0444267 and, in doing so, stated in a narrative section of the hearing referral that they did not initially certify for LWA benefits "due to my language limitation" but that claimant "just got help and certified." Exhibit 2 at 2. This statement suggests that on October 14, 2021, someone helped claimant to understand decision # 0444267 despite it not being written in Vietnamese, which would have the effect of making the factor beyond their control cease to exist. Because claimant filed their late request for hearing on October 14, 2021, the same day the factor beyond their control ceased to exist, claimant filed within a seven-day "reasonable time."

For the above reasons, claimant had good cause for failing to file a timely request for hearing, and filed their late request for hearing within a reasonable time. Claimant's late request for hearing on decision # 0444267 therefore is allowed, and claimant is entitled to a hearing on the merits of that decision. On remand, a Vietnamese interpreter should be assigned to the hearing on the merits.

DECISION: Order No. 21-UI-177742 is set aside, as outlined above.

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

DATE of Service: August 11, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-177742 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

NOTE: The Department may defer recovery or completely waive the overpaid amount if certain standards are met. To make a request for Waiver of Overpayment Recovery, call 503-947-1995 or email OED_Overpayment_unit@employ.oregon.gov . You must submit waiver applications that correspond to the program for which you were overpaid benefits. **If you were overpaid benefits under both state and federal benefits programs, you will need to file two separate waiver applications.** To access a State UI Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for "State UI Overpayment Waiver". To access a Federal Program Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for "Federal Program Overpayment Waiver".

Sở Lao Động Hoa Kỳ đã trao cho các cơ quan chính phủ tiểu bang quyền từ bỏ một số khoản trả tiền vượt mức mà mọi người đã nhận được từ các chương trình phúc lợi khẩn cấp đại dịch liên bang. Sở Lao Động Oregon cung cấp một [lựa chọn miễn trừ trực tuyến cho việc trả tiền vượt mức các phúc lợi liên bang](#) cho những người yêu cầu hội đủ điều kiện. Quý vị có thể yêu cầu miễn trừ nếu xác định rằng quý vị KHÔNG có lỗi trong việc trả tiền vượt mức VÀ việc trả lại sẽ gây khó khăn tài chính. Sự miễn trừ này chỉ áp dụng cho các chương trình sau:

- Trợ cấp Thất nghiệp Khẩn cấp Do Đại dịch (PEUC)
- Trợ cấp Thất nghiệp Do Đại dịch Liên bang (FPUC)
- Trợ cấp Thất nghiệp Do Đại dịch (PUA)
- Trợ cấp Tiền lương Bị mất (LWA)
- Trợ cấp Thất nghiệp Cho Người kiếm tiền Hồn hợp (MEUC)

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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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.