

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0886

Reversed & Remanded

PROCEDURAL HISTORY: On December 30, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective November 27, 2022 (decision # 113256). Also on December 30, 2022, the Department served notice of an administrative decision concluding that claimant was not able to work or available for work during each of the weeks including December 4, 2022 through December 24, 2022 (weeks 49-22 through 51-22) and was denied benefits for those weeks and until the reason for the denial had ended (decision # 115352). On January 19, 2023, decisions # 113256 and 115352 became final without claimant having requested a hearing. On February 21, 2023, claimant filed late requests for hearing on decisions # 113256 and 115352.

ALJ Kangas considered claimant's requests, and on May 24, 2023 issued Orders No. 23-UI-226011 and 23-UI-226012, dismissing claimant's requests for hearing as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by June 7, 2023. On June 9, 2023, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 23-UI-226011 and 23-UI-226012 with the Employment Appeals Board (EAB). On July 18, 2023, ALJ Kangas mailed a letter to claimant stating that because the response to the appellant questionnaire was late, it would not be considered and a new order would not be issued with regard to the late request for hearing on decision # 115352. These matters come before EAB based upon claimant's June 9, 2023 applications for review of Orders No. 23-UI-226011 and 23-UI-226012.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-226011 and 23-UI-226012. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0885 and 2023-EAB-0886).

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 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.

FINDING OF FACT: (1) On December 30, 2022, decisions # 113256 and 115352 were mailed to claimant's address of record on file with the Department. Both decisions stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than January 19, 2023." Order No. 23-UI-226011 Exhibit 1 at 2; Order No. 23-UI-226012 Exhibit 1 at 2. Claimant filed their late requests for hearing on decisions # 113256 and 115352 on February 21, 2023.

CONCLUSIONS AND REASONS Orders No. 23-UI-226011 and 23-UI-226012 are set aside and these matters remanded for hearings on whether claimant's late requests for hearing on decisions # 113256 and 115352 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 deadline to file a timely request for hearing on decisions # 113256 and 115352 was January 19, 2023. Claimant filed their requests for hearing on February 21, 2023. Therefore, the requests for hearing were late. However, claimant may have had good cause to file their requests for hearing late. Claimant stated in their appellant questionnaire response that they submitted their hearing requests "[f]irst time online... sometime in January." EAB Exhibit 1 at 1. Claimant further stated that their requests for hearing were not filed on time "[b]ecause I had already done it, but apparently it didn't go through." EAB Exhibit 1 at 2. If claimant attempted to file requests for hearing on or before January 19, 2023, but the requests were not received by the Department and claimant did not learn this until after the filing deadline, claimant's requests for hearing may have been filed late due to factors beyond claimant's reasonable control or an excusable mistake.

Further development of the record is necessary to determine if claimant had good cause to file their late requests for hearing. On remand, inquiry should be made into when claimant received decisions # 113256 and 115352, when and how claimant attempted to file requests for hearing on those decisions, and any reasons why the Department may not have received earlier requests for hearing prior to February 21, 2023. Inquiry should also be made into when claimant learned that any earlier attempts to file requests for hearing on decisions # 113256 and 115352 had not been received, and therefore whether claimant's February 21, 2023 requests for hearing were filed within a reasonable time after any factors that prevented timely filing ceased.

For these reasons, Orders No. 23-UI-226011 and 23-UI-226012 are reversed, and the matters remanded for hearings to determine whether claimant had good cause to file their requests for hearing late and, if so, the merits of decisions # 113256 and 115352.

DECISION: Orders No. 23-UI-226011 and 23-UI-226012 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: August 23, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 23-UI-226011 and 23-UI-226012 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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