

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0994

Reversed and Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On August 9, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective February 28, 2021 (decision # 100927). Also on August 9, 2021, the Department served notice of an administrative decision concluding that claimant was discharged for misconduct and therefore was disqualified from receiving benefits effective November 1, 2020 (decision # 85851). On August 30, 2021, decisions # 100927 and 85851 became final without claimant having filed requests for hearing. On September 24, 2021, the Department served notice of an administrative decision, based in part on decisions # 100927 and 85851, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$510 in regular unemployment insurance (regular UI) benefits, \$4,790 in Extended Benefits (EB), \$9,101 in Pandemic Emergency Unemployment Compensation (PEUC) benefits, and \$6,600 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department, a \$4,200.20 monetary penalty, and a 52-week penalty disqualification from future benefits. On October 14, 2021, the September 24, 2021 administrative decision became final without claimant having filed a request for hearing. On October 20, 2022, claimant filed late requests for hearing on decisions # 100927 and 85851 and the September 24, 2021 administrative decision.

ALJ Kangas considered claimant's requests, and on February 16, 2023 issued Orders No. 23-UI-216210,

23-UI-216211, and 23-UI-216212, dismissing claimant's requests for hearing on decisions # 100927 and 85851 and the September 24, 2021 administrative decision, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by March 2, 2023. On March 4, 2023, claimant filed a late response to the appellant questionnaire¹ and timely applications for review of Orders No. 23-UI-216210, 23-UI-216211, and 23-UI-216212 with the Employment Appeals Board (EAB). On August 31, 2021, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue additional orders regarding these matters because the questionnaire response was late. These matters come before EAB based upon claimant's March 4, 2023 applications for review of Orders No. 23-UI-216210, 23-UI-216211, and 23-UI-216212.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-216210, 23-UI-216211, and 23-UI-216212. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2023-EAB-0992, and 2023-EAB-0993, and 2023-EAB-0994).

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. 23-UI-216210, 23-UI-216211, and 23-UI-216212 are set aside and these matters remanded for hearings on whether claimant's late requests for hearing on decisions # 100927 and 85851 and the September 24, 2021 administrative decision 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 requests for hearing on decisions # 100927 and 85851 were due by August 30, 2021. The request for hearing on the September 24, 2021 administrative decision was due by October 14, 2021. Because claimant did not file any of their requests for hearing until October 20, 2022, the requests were late.

On their October 20, 2022 requests for hearing, claimant indicated that they "have tried several times to get a hearing but for some reason it did not go through." Orders No. 23-UI-216210, 23-UI-216211, and

¹ Claimant filed individual appellant questionnaire responses for each of the three administrative decisions, aggregated with their applications for review. It is not clear which pages correspond to which administrative decisions. For ease of reading, claimant's aggregated responses will be referred to as a single response.

23-UI-216212, Exhibit 2 at 2. Further, claimant indicated on their appellant questionnaire response that they were “sick with COVID 19 and responded several times via online through the website and never got a response[.]” EAB Exhibit 1 at 3. Claimant did not indicate on what dates they filed, or attempted to file, requests for hearing prior to October 20, 2022. On remand, the ALJ should inquire as to when claimant filed, or attempted to file, requests for hearing in order to determine whether claimant filed timely requests for hearing on any of the three administrative decisions at issue in these matters. To the extent that the record does not show that claimant filed timely requests for hearing on any of the administrative decisions, the ALJ should also inquire as to whether claimant was prevented from filing timely requests for hearing due to factors or circumstances beyond their reasonable control; and, if so, whether they filed their late requests for hearing within a reasonable time of when those factors or circumstances ceased.

Orders No. 23-UI-216210, 23-UI-216211, and 23-UI-216212 therefore are reversed, and these matters remanded for hearings on whether claimant’s late requests for hearing should be allowed and, if so, the merits of decisions # 100927 and 85851 and the September 24, 2021 administrative decision.

DECISION: Orders No. 23-UI-216210, 23-UI-216211, and 23-UI-216212 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: September 18, 2023

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 23-UI-216210, 23-UI-216211, and 23-UI-216212 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 الاستئناف 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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