

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1060-R

Request for Reconsideration Allowed
EAB Decision 2023-EAB-1060 Adhered to on Reconsideration

PROCEDURAL HISTORY: On July 19, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was denied unemployment insurance benefits from July 2, 2023 through July 15, 2023 (weeks 27-23 through 28-23), during a school recess period, because he was likely to return to work for the employer after the break, and his wages and/or hours with non-educational employers were not sufficient to entitle him to benefits during the break (decision # 111955). Claimant filed a timely request for hearing. On September 8, 2023, ALJ Ramey conducted a hearing at which the employer failed to appear, and on September 15, 2023, issued Order No. 23-UI-236007, modifying decision # 111955 by concluding that claimant was denied benefits for the period of July 2, 2023 through September 9, 2023 (weeks 27-23 through 36-23). On September 20, 2023, claimant filed an application for review with the Employment Appeals Board (EAB). On November 8, 2023, EAB issued EAB Decision 2023-EAB-1060, affirming Order No. 23-UI-236007. On November 9, 2023, claimant filed a request for reconsideration of EAB Decision 2023-EAB-1060 with EAB. This decision is issued pursuant to EAB’s authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: Claimant’s request for reconsideration is allowed. EAB Decision 2023-EAB-1060 is adhered to on reconsideration.

ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including “the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law.” “Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice.” OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

Claimant’s request for reconsideration was filed on November 9, 2023, which was within 20 days of the mailing of EAB Decision 2023-EAB-1060. The request also contends that claimant identified “an

apparent discrepancy” in EAB Decision 2023-EAB-1060 relating to EAB’s consideration of the written arguments claimant submitted in the case, which claimant believed “warrants further consideration.” Reconsideration Request at 1. This is sufficient to amount to a request to correct an alleged error of law. Accordingly, claimant’s reconsideration request is consistent with the requirements set forth in OAR 471-041-0145 and therefore is allowed. However, EAB Decision 2023-EAB-1060 is adhered to on reconsideration.

In claimant’s request, claimant pointed out that the “**WRITTEN ARGUMENT**” section of EAB Decision 2023-EAB-1060 stated, “EAB did not consider the argument forwarded from OAH because claimant did not declare that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).” Reconsideration Request at 1. Claimant further stated that “the assertion that I did not comply with the procedural requirements seems to be inaccurate” and indicated that “when filing the appeal on the EAB website, I explicitly indicated that I would be sending the additional information to all relevant parties, as required by OAR 471.” Reconsideration Request at 1.

OAR 471-041-0080(2)(a) states as follows:

(2) A party’s written argument will not be considered unless it:

(a) Includes a statement that a copy **was provided** to the opposing party or parties. Example: “I declare that on [date] I sent a copy of this document to the opposing party, addressed as follows: ABC Company, [description of sending method].”

(emphasis added).

On September 20, 2023, claimant submitted a written argument using EAB’s Written Argument web form as a narrative on the web form. On this web form document, claimant indicated that he sent copies of his written argument to the other parties on September 20, 2023 by mail. EAB considered claimant’s arguments contained on the written argument web form document to the extent they were based on the record.

Also on September 20, 2023, claimant used EAB’s Application for Review web form to file an application for review of Order No. 23-UI-236007 and attached two documents to his application for review web form page. The first of the two documents was a three-page letter addressed to EAB that made arguments in support of claimant’s appeal. The second of the two documents was Exhibit 1, which ALJ Ramey admitted at hearing, and which EAB considered as part of its review of the entire hearing record. Audio Record at 3:37. Neither the application for review web form page, nor the two documents attached thereto, included a statement that a copy was provided to the opposing party or parties. Nevertheless, because the application for review web form page and the documents attached thereto were filed at the same time as claimant’s written argument web form document, EAB viewed the statement on claimant’s written argument web form document that he mailed copies of his written argument to the other parties on September 20, 2023 as applicable to claimant’s application for review web form page and the documents attached thereto. Therefore, EAB considered claimant’s arguments

contained in the application for review web form page and the documents attached thereto to the extent they were based on the record.

Also on September 20, 2023, EAB received an email from an employee of the Office of Administrative Hearings (OAH), in which the employee stated, “The claimant sent his appeal to me before receiving the decision in the mail. I did send him a courtesy copy of the decision via email per his request. I attached the appeal request he faxed.” Attached to the email was a four-page document with an imprinted fax transmission date of September 18, 2023, that consisted of a fax cover sheet, a handwritten cover page, and a two-page letter addressed to the Employment Department that made arguments in support of claimant’s appeal. Neither the fax cover sheet, nor the handwritten cover page, nor the two-page letter addressed to the Department included a statement that a copy was provided to the opposing party or parties. Accordingly, EAB did not consider the argument forwarded from OAH because claimant did not declare that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a).

However, when one compares the two-page letter addressed to the Department that made arguments in support of claimant’s appeal (which EAB did not consider) with the three-page letter addressed to EAB that made arguments in support of claimant’s appeal (which EAB *did* consider to the extent its arguments were based on the record), it is apparent that the letters are substantially identical except that the three-page letter contains seven additional paragraphs. Thus, although EAB was prohibited by OAR 471-041-0080(2)(a) from considering the written argument forwarded from OAH, the arguments it contained, to the extent they were based on the record, were ultimately considered by EAB when EAB considered claimant’s three-page letter attached to his application for review web form page.

For these reasons, EAB appropriately applied OAR 471-041-0080(2)(a) in its consideration of the written arguments submitted in this case. Accordingly, EAB Decision 2023-EAB-1060 is adhered to, as clarified herein.

DECISION: Claimant’s request for reconsideration is allowed. On reconsideration, EAB Decision 2023-EAB-1060 is adhered to, as clarified herein.

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

DATE of Service: December 22, 2023

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymzmo.com/s3/5552642/EAB-Customer-Service-Survey>.

You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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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