

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1064

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On October 19, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received \$2,845 in regular unemployment insurance (regular UI) benefits to which he was not entitled and must repay (decision # 94925). On November 9, 2020, decision # 94925 became final without claimant having filed a request for hearing. On August 8, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on November 14, 2022 issued Order No. 22-UI-207266, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 28, 2022. On November 28, 2022, claimant filed a timely response to the appellant questionnaire. On April 19, 2023, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 22-UI-207266 was vacated and that a new hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of decision # 94925. On August 30, 2023, ALJ Chiller conducted a hearing, and on September 7, 2023 issued Order No. 23-UI-235262, dismissing claimant's request for hearing as late without good cause and leaving decision # 94925 undisturbed. On September 21, 2023, claimant filed a timely application for review of Order No. 23-UI-235262 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On October 19, 2020, the Department mailed decision # 94925 to claimant's address on file with the Department. Decision # 94925 stated, "If you disagree with the amount of overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before November 9, 2020 to be timely." Exhibit 4 at 2.

(2) Prior to the issuance of decision # 94925, in or around early February 2020, claimant stopped claiming weekly benefits.

(3) The address to which the Department mailed decision # 94925 was claimant's correct address, but claimant never received the decision in the mail. Claimant was not aware of any specific issues that impacted his mail delivery, but claimant's neighbor had previously raised concerns to claimant about missing mail.

(4) On June 17, 2022, claimant filed a new claim for benefits. On July 18, 2022, after having investigated a work separation that claimant reported, the Department determined that claimant was not disqualified from benefits based on the work separation, and was otherwise eligible for benefits. However, the Department did not pay claimant benefits at that time, instead offsetting benefits to which he would have otherwise been entitled in order to satisfy the overpayment.

(5) On July 25, 2022, claimant realized that he had not been receiving benefits, and contacted the Department. Claimant spoke to a Department representative who explained the overpayment decision, of which claimant was not aware prior to the call. The representative advised him that he could request a hearing, gave him contact information for OAH, but told him that "the chances [of the request for hearing being allowed] were sparsely [*sic*] because it's been two years." Transcript at 25. The representative did not provide claimant with a copy of decision # 94925. Claimant did not file a request for hearing at that time.

(6) On August 8, 2022, claimant spoke with another Department representative, who advised claimant how to file his request for hearing online and helped him through the process. Claimant filed his request for hearing that day.

CONCLUSIONS AND REASONS: Claimant's late request for hearing is allowed. Order No. 23-UI-235262 is reversed and this matter remanded for a hearing on the merits of decision # 94925.

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 # 94925 was due by November 9, 2020. Because claimant did not file his request for hearing until August 8, 2022, the request was late. The record shows that claimant did not receive a copy of decision # 94925 despite it being mailed to the correct address, and was not aware of the overpayment that had been assessed until he spoke to the Department on July 25, 2022. Claimant's failure to receive decision # 94925 constituted a factor beyond his reasonable control which prevented him from filing a timely request for hearing. While the order under review acknowledged this, it nevertheless concluded that claimant did not file his request within a reasonable time because while he became aware of the overpayment on July 25, 2022—at which point the factors preventing a timely filing ceased—he did not file the request until August 8, 2022. Order No. 23-UI-235262 at 3–4. The

record does not support the conclusion that the factors preventing claimant's timely filing ceased on July 25, 2022.

While claimant became aware of decision # 94925 on July 25, 2022, that awareness alone was not sufficient to cause the factors which prevented his timely filing to cease. Had claimant received a copy of decision # 94925, he would likely have also received instructions on how to file his request for hearing. When he spoke to the Department on July 25, 2022, however, the representative incorrectly advised claimant to contact OAH, instead of advising claimant to file the request directly with the Department,¹ and further suggested that claimant's chances of prevailing on the late request for hearing were poor. Without being correctly advised as to how he should file the request for hearing, and given that the representative he spoke to that day suggested that efforts to file the request would be futile, the factors preventing claimant's timely filing persisted beyond July 25, 2022. On August 8, 2022, claimant spoke to another Department representative, who correctly advised claimant how to file the request for hearing, and assisted him in doing so. At that point, the factors which prevented claimant's timely filing ceased. Because claimant filed the request the same day that the factors which prevented the timely filing ceased, claimant filed it within a reasonable time.

For the above reasons, claimant had good cause for failing to file a timely request for hearing, and filed his late request for hearing within a reasonable time. Claimant's late request for hearing on decision # 94925 therefore is allowed, and claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 23-UI-235262 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: November 2, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-235262 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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¹ See generally OAR 471-040-0005 (July 15, 2018), explaining the methods the Department has designated for filing requests for hearing.



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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