

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1116

Reversed
Late Requests for Hearing Allowed, Merits Hearings Required

PROCEDURAL HISTORY: On February 25, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving benefits effective April 19, 2020 (decision # 131552). On March 17, 2021, decision # 131552 became final without claimant having filed a request for hearing. On May 4, 2022, the Department served notice of an administrative decision based in part of decision # 131552, concluding that claimant was overpaid \$1,042 in regular unemployment insurance (regular UI) and \$4,200 in Federal Pandemic Unemployment Compensation (FPUC) that claimant must repay (decision # 94131). On May 24, 2022, decision # 94131 became final without claimant having filed a request for hearing.

On February 6, 2023, claimant filed late requests for hearing on decisions # 131552 and 94131. ALJ Kangas considered claimant's requests, and on May 17, 2023, issued Orders No. 23-UI-225221 and 23-UI-23-UI-225164, dismissing the requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by May 31, 2023. On June 1, 2023, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 23-UI-225221 and 23-UI-23-UI-225164 with the Employment Appeals Board (EAB). On October 4, 2023, ALJ Kangas mailed letters advising that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue additional orders regarding the matters because the questionnaire response was late. These matters come before EAB based upon claimant's June 1, 2023, applications for review of Order No. 23-UI-225221 and 23-UI-23-UI-225164.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-225221 and 23-UI-23-UI-225164. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1117 and 2023-EAB-1116).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is a letter claimant attached to their applications for review, which EAB regards as claimant's response to the appellant questionnaire. The appellant questionnaire response has been marked as EAB Exhibit 1, and a copy is 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.

FINDINGS OF FACT: (1) In March of 2020, claimant filed an initial claim for benefits.

(2) In September 2020, claimant claimed benefits for weeks of unemployment that occurred in the spring and summer of 2020. In mid-September 2020, received a notice that the Department would not pay claimant for the weeks. EAB Exhibit 1 at 1.

(3) Claimant attempted to contact the Department for more information regarding the notice claimant received. In early December 2020, claimant reached a representative and was told they needed to request a hearing to receive payment for the weeks claimant had claimed. On December 10, 2020, Claimant submitted to the Department a request for hearing, and received documentation that the Department received the request on December 18, 2020. EAB Exhibit 1 at 1.

(4) On February 25, 2021, the Department mailed decision # 131552 to claimant's address of record on file with the Department. Decision # 131552 concluded that claimant quit work without good cause and was disqualified from receiving benefits effective April 19, 2020. Decision # 64220 stated, in relevant part, "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 March 17, 2021." Order No. 23-UI-225221 Exhibit 1 at 2.

(5) Claimant believed that they had a request for hearing pending on decision # 131552 based on the December 10, 2020, hearing request they had previously submitted to the Department. Shortly after decision # 131552 was issued, claimant contacted the Department about the matter and, "was told... that [their] request for a hearing had been received on December 18, 2020, and the referral date was December 10, 2020, and that [they were] waiting for any appeal to be scheduled, but due to backlog was taking longer." Order No. 23-UI-225221 Exhibit 2 at 2. Subsequently, claimant received payment for the weeks of benefits they claimed in September 2020. EAB Exhibit 1 at 1.

(6) Months passed, and over that course of time, claimant contacted the Department multiple times and continued to receive information that due to a backlog, a hearing on decision #131552 had not been scheduled yet but the appeal was still pending. EAB Exhibit 1 at 1.

(7) On May 4, 2022, the Department mailed decision # 94131 to claimant's address of record on file with the Department. Decision # 94131 was based on in part on decision # 131552, and assessed overpayments that claimant was required to repay the Department. Decision # 94131 stated, in relevant part, "If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before May 24, 2022, to be timely." Order No. 23-UI-225164 Exhibit 1 at 2.

(8) Claimant had problems with third parties tampering with or stealing claimant's mail and did not receive decision # 94131. EAB Exhibit 1 at 1.

(9) On July 6, 2022, claimant received an overpayment billing invoice from the Department. The invoice did not mention claimant's right to appeal decision # 94131 or the deadline for doing so. The invoice stated that claimant could pursue a waiver of overpayment recovery, and on November 7, 2022, claimant filed an overpayment waiver application with the Department. EAB Exhibit 1 at 1.

(10) Claimant continued to receive overpayment billing invoices. EAB Exhibit 1 at 1. On February 6, 2023, claimant contacted the Department again to check the status of the request for hearing they submitted on December 10, 2020. Order No. 23-UI-225221 Exhibit 2 at 2. A Department representative advised that the Department regarded the December 10, 2020, request for hearing as having been filed by claimant's employer. Claimant then called the Office of Administrative Hearings (OAH) and learned that OAH had no record of claimant's December 10, 2022, hearing request. Order No. 23-UI-225221 Exhibit 2 at 2.

(11) On February 6, 2023, claimant filed late requests for hearing on decisions # 131552 and 94131.

CONCLUSIONS AND REASONS: Orders No. 23-UI-225221 and 23-UI-23-UI-225164 are set aside. Claimant's late requests for hearing on decisions # 131552 and 94131 are allowed, and hearings on the merits of those decisions are required.

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 request a hearing on decision # 131552 was March 17, 2021. The deadline to request a hearing on decision # 94131 was May 24, 2022. Because claimant did not request hearings on the administrative decisions until February 6, 2023, claimant's requests for hearing were late.

Claimant established good cause to extend the deadline to appeal decision # 131552 to February 6, 2023. Claimant's submissions show that they contacted the Department in December 2020 about being denied benefits for weeks they had claimed, and, per information received from a Department representative, submitted to the Department a request for hearing on December 10, 2020. Evidently, this hearing request was mistaken for an appeal filed by claimant's employer, and was not conveyed to OAH for hearing scheduling purposes. A short time later, on February 25, 2021, the Department issued decision # 131552, and claimant contacted the Department about the status of the hearing claimant thought they had pending on the decision. At that time claimant "was told . . . that [their] request for a hearing had been received on December 18, 2020, and the referral date was December 10, 2020, and that [they were] waiting for any appeal to be scheduled, but due to backlog was taking longer." Order No. 23-UI-225221 Exhibit 2 at 2. Months then passed without a hearing, and over that course of time, claimant contacted the Department and continued to receive information that due to a backlog, a hearing on decision #131552 had not been scheduled yet but the appeal was still pending. EAB Exhibit 1 at 1. It was on February 6, 2023, when claimant made yet another inquiry about the hearing, they thought they had requested, that claimant learned that the Department regarded the December 10, 2020, request for

hearing as having been filed by claimant's employer and that OAH had no record of claimant's December 10, 2022, hearing request.

Claimant's reliance on assurances they had received from Department representatives—that their request for hearing on decision # 131552 was received but a hearing was delayed due to a backlog of cases—was reasonable. These circumstances therefore constituted an excusable mistake that prevented claimant from filing a timely appeal. These circumstances ceased to exist on February 6, 2023, when claimant learned that the Department regarded the December 10, 2020, request for hearing as having been filed by claimant's employer and that OAH had no record of claimant's December 10, 2022, hearing request. Claimant filed a request for hearing on decision # 131552 on February 6, 2023, the same day the circumstances ceased. Thus, claimant established good cause to request a hearing on decision # 131552 late and did so within a reasonable time.

Similarly, claimant established good cause to extend the deadline to appeal decision # 94131 to February 6, 2023. Claimant did not receive decision # 94131 because, more likely than not, a third party tampered with or stole claimant's mail. Claimant's non-receipt of decision # 94131 was a factor beyond claimant's reasonable control that prevented a timely filing. These circumstances did not cease until February 6, 2023, when claimant filed a request for hearing on decision # 94131. Although claimant had received overpayment billing invoices prior to February 6, 2023, the invoices were not sufficient to cause the factor beyond claimant's control to cease because they did not mention claimant's right to appeal decision # 94131 or the deadline for doing so. Thus, claimant established good cause to request a hearing on decision # 94131 late and did so within a reasonable time.

Claimant's late requests for hearing on decisions # 131552 and 94131 are allowed and hearings on the merits of those administrative decisions is required.

DECISION: Orders No. 23-UI-225221 and 23-UI-23-UI-225164 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: October 13, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 23-UI-225221 or 23-UI-23-UI-225164 or return these matters to EAB. Only a timely application for review of each subsequent order will cause either matter 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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