

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1121

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On December 9, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had failed to provide information to the Department and was therefore ineligible for unemployment insurance benefits for the weeks of November 13, 2022, through December 3, 2022 (weeks 46-22 through 48-22) and until the reason for denial ended (decision # 613061). On December 23, 2022, the Department served notice of an administrative decision concluding that claimant had failed to register for work in accordance with the Department's rules and was therefore ineligible for benefits for the week of December 4, 2022, through December 10, 2022 (week 49-22) and until the reason for the denial ended. On December 29, 2022, decision # 613061 became final without claimant having filed a request for hearing. On January 12, 2023, the December 23, 2022, administrative decision became final without claimant having requested a hearing. On January 23, 2023, claimant filed late requests for hearing on decision # 613061 and the December 23, 2022, administrative decision.

ALJ Kangas considered claimant's requests, and on May 16, 2023, issued Orders No. 23-UI-225043 and 23-UI-225046, dismissing claimant's requests for hearing on decision # 613061 and the December 23, 2022, administrative decision, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by May 30, 2023. On May 31, 2023, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 23-UI-225043 and 23-UI-225046 with the Employment Appeals Board (EAB). On October 4, 2023, 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 May 31, 2023, applications for review of Orders No. 23-UI-225043 and 23-UI-225046.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-225043 and 23-UI-225046. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1121 and 2023-EAB-1122).

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-225043 and 23-UI-225046 are set aside and these matters remanded for hearings on whether claimant’s late requests for hearing on decision # 613061 and the December 23, 2022, 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. Under OAR 471-040-0010(1)(b)(A), “good cause” does not include “[f]ailure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal[.]”

The requests for hearing on decision # 613061 and the December 23, 2022, administrative decision were due by December 29, 2022 and January 12, 2023, respectively. Because claimant did not file their requests for hearing until January 23, 2023, the requests were late. On their appellant questionnaire response, claimant indicated that they received the administrative decision on January 22, 2023, and stated that “the place I was at was not giving me my mail.” EAB Exhibit 1 at 1. Claimant further stated that they failed to file timely requests for hearing because they “moved away from Eugene OR and did not receive the paperwork in time.” EAB Exhibit 1 at 2. Claimant did not distinguish on their appellant questionnaire response whether they were referring to one or both of the administrative decisions at issue.

If claimant did not receive one or both of the administrative decisions until January 22, 2023, because they were not receiving their mail in a timely manner, they may have filed the late requests for hearing due to factors beyond their reasonable control. However, further information is required to determine whether claimant had good cause to file the late requests for hearing and, if so, whether they filed them within a reasonable time after the factors which prevented timely filing ceased. On remand, inquiry should be made as to when claimant first received each of the administrative decisions, and what issues had arisen that interfered with their timely receipt of mail. The record should also be developed as to where claimant was actually residing when the Department mailed each of the decisions; when they moved; and, to the extent that the Department mailed either of the decisions to an outdated address because claimant had moved, whether claimant failed to update the Department of their new address while they were claiming benefits or knew or had reason to know of a pending appeal at the time the decisions were issued.

Orders No. 23-UI-225043 and 23-UI-225046 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 decision # 613061 and the December 23, 2022, administrative decision.

DECISION: Orders No. 23-UI-225043 and 23-UI-225046 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 19, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 23-UI-225043 or 23-UI-225046 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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