

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1123

Reversed & Remanded

PROCEDURAL HISTORY: On March 8, 2023, the Oregon Employment Department (the Department) served notice of a wage and potential benefit report (WPBR) concluding that claimant's weekly benefit amount was \$183 and maximum benefit amount was \$3,546. On March 20, 2023, the March 8, 2023 WPBR became final without claimant having filed a request for hearing. On September 18, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on September 26, 2023 issued Order No. 23-UI-236777, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 10, 2023. On October 12, 2023, claimant filed a late response to the appellant questionnaire and a timely application for review with the Employment Appeals Board (EAB).¹ On October 18, 2023, ALJ Kangas mailed a letter to claimant stating that because the appellant questionnaire response was filed late, it would not be considered, and another order would not be issued. This matter comes before EAB based upon claimant's October 12, 2023 application for review of Order No. 23-UI-236777.

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, and has been 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.

FINDINGS OF FACT: (1) On March 8, 2023, the March 8, 2023 WPBR was mailed to claimant's address on file with the Department.

¹ Claimant mailed these documents, which were received October 16, 2023. It is unclear whether the date stamped on the envelope is a postmark, however October 12, 2023 is the filing date because it is the most probable date of mailing. See OAR 471-041-0065(2) (May 13, 2019); EAB Exhibit 1 at 4.

(2) On September 18, 2023, claimant sent a message to the Department expressing disagreement with the March 8, 2023 WPBR. In the message, claimant wrote that they had “written this similar report in this ‘contact us’ portal twice, 13 March 2023 and 3 April 2023[.]” Exhibit 2 at 2. The September 18, 2023 message was construed as a late request for hearing on the March 8, 2023 WPBR.

CONCLUSIONS AND REASONS: Order No. 23-UI-236777 is set aside and the matter remanded for a hearing to determine whether claimant filed a timely request for hearing or if their late request for hearing should be allowed and, if so, the merits of the March 8, 2023 WPBR.

ORS 657.266 provides that the Department’s initial determination of eligibility and amount of benefits becomes final unless a party files a request for redetermination or hearing within 10 days after the date the decision is mailed. ORS 657.875 provides that the 10-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 file a timely request for hearing on the March 8, 2023 WPBR was March 20, 2023. Claimant’s request for hearing was filed September 18, 2023. Accordingly, that request for hearing was late.

Claimant wrote in their September 18, 2023 request for hearing why they disagreed with the March 8, 2023 WPBR, specifically that they believed they earned \$28,809.19 in subject wages during the base year. Exhibit 2 at 2. Claimant also wrote that they had sent “this similar report” to the Department on March 13, 2023 and April 3, 2023. Exhibit 2 at 2. If claimant requested a redetermination of the March 8, 2023 WPBR by sending a message to the Department on March 13, 2023, such a request would have been timely. Such a message may also have constituted a timely request for hearing, particularly if the message’s contents were substantially similar to the September 18, 2023 message that was construed as a request for hearing. Claimant’s belief that such a message was received by the Department, even if not actually received, could constitute a factor beyond claimant’s reasonable control or an excusable mistake that delayed timely filing of the request for hearing. Further development of the record is therefore necessary to determine whether claimant filed a timely request for redetermination or a hearing, or had good cause to file the September 18, 2023 request for hearing late due to factors beyond their reasonable control or an excusable mistake.

On remand, inquiry should be made into the contents of claimant’s March 13, 2023 message, and what may have prevented the Department from receiving it if it was not received. If good cause is found to extend the deadline for timely filing, further inquiry should be made to determine whether claimant filed the late request for hearing within a seven-day “reasonable time” after the circumstances that prevented timely filing ceased to exist. If claimant’s request for hearing is allowed, a hearing on the merits of the March 8, 2023 WPBR is required.

Order No. 23-UI-236777 therefore is reversed, and this matter remanded for a hearing on whether claimant’s late request for hearing should be allowed, and if so, the merits of the March 8, 2023 WPBR.

DECISION: Order No. 23-UI-236777 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: November 22, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-236777 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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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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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