

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1127

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On March 24, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide information in accordance with the Department's rules and therefore was ineligible to receive unemployment insurance benefits for the weeks of June 21, 2020 through July 4, 2020 (weeks 26-20 through 27-20), December 13, 2020 through January 2, 2021 (weeks 51-20 through 53-20), January 17, 2021 through February 20, 2021 (weeks 03-21 through 07-21) and until the reason for the denial ended (decision # 63623). On April 13, 2021, decision # 63623 became final without claimant having filed a request for hearing. On July 11, 2022, the Department served notice of an administrative decision, based in part on decision # 63623, concluding that claimant received benefits to which they were not entitled and assessing an overpayment of \$151 in regular unemployment insurance (regular UI) benefits and \$600 in Federal Pandemic Unemployment Assistance (FPUC) benefits that claimant was required to repay to the Department (decision # 133451). On August 1, 2022, decision # 133451 became final without claimant having filed a request for hearing. On January 13, 2023, claimant filed late requests for hearing on decisions # 63623 and 133451.

ALJ Kangas considered claimant's requests, and on May 26, 2023, issued Orders No. 23-UI-226202 and 23-UI-226200, dismissing claimant's requests for hearing on decisions # 63623 and 133451, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by June 9, 2023. On June 15, 2023, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 23-UI-226202 and 23-UI-226200 with the Employment Appeals Board (EAB). On October 17, 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 June 15, 2023, applications for review of Orders No. 23-UI-226202 and 23-UI-226200.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-226202 and 23-UI-226200. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1129 and 2023-EAB-1127).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant’s June 15, 2023, response to the appellant questionnaire and a July 27, 2023, email that claimant sent to OAH, 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-226202 and 23-UI-226200 are set aside and these matters remanded for hearings on whether claimant’s late requests for hearing on decisions # 63623 and 133451 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.

The requests for hearing on decisions # 63623 and 133451 were due by April 13, 2021, and August 1, 2022, respectively. Because claimant did not file their requests for hearing until January 13, 2023, the requests were late. On their appellant questionnaire response, claimant stated, “I did not receive decision in time to appeal. (It’s not dated – but it was sent in July 2022.)” EAB Exhibit 1 at 1 (parentheses in original). Claimant further stated, “I did not have any information about what caused the decision. I did not receive an overpayment.” EAB Exhibit 1 at 2. Claimant also indicated that they were prompted to file the requests for hearing when they did due to the recommendation of an employment specialist at the WorkSource Oregon office where they filed the requests. EAB Exhibit 1 at 2.

If claimant did not receive either of the administrative decisions at issue prior to the respective appeal deadlines, they may have failed to file the requests for hearing due to factors beyond their reasonable control. However, further information is necessary to determine whether claimant had good cause to file the late requests for hearing. On remand, the ALJ should inquire as to when, if at all, claimant received the administrative decisions at issue and, to the extent that claimant did not receive them at all or prior to the timely appeal deadlines, whether difficulties with claimant’s receipt of mail or similar issues prevented claimant from filing timely requests for hearing. The ALJ should also inquire as to whether claimant filed the requests for hearing within the seven-day “reasonable time” period after the factors which prevented timely filings ceased.

Orders No. 23-UI-226202 and 23-UI-226200 therefore are reversed, and these matters remanded for hearings on whether claimant’s late requests for hearing on decisions # 63623 and 133451 should be allowed and, if so, the merits of those decisions.

DECISION: Orders No. 23-UI-226202 and 23-UI-226200 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: October 25, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 23-UI-226202 and 23-UI-226200 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these matters to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.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.

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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.