

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1208

Affirmed
Eligible Weeks 28-22 through 30-22
Ineligible Weeks 31-22 through 35-22

PROCEDURAL HISTORY: On August 9, 2022, 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 was ineligible for benefits for the weeks from July 10 through 30, 2022 (weeks 28-22 through 30-22) and until the reason for the denial ended (decision # 599198). On August 29, 2022, decision # 599198 became final without claimant having filed a request for hearing. On September 15, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on January 10, 2023 issued Order No. 23-UI-212147, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 24, 2023. On January 23, 2023, claimant filed a timely response to the appellant questionnaire. On July 31, 2023, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 23-UI-212147 was vacated and that a hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of decision # 599198.

On September 1, 2023, ALJ Chiller conducted a hearing, which was continued to September 26, 2023 and presided over by ALJ Scott, but no evidence was taken and the matter was continued again to September 28, 2023. On September 28, 2023, ALJ Chiller conducted the final session of the hearing and completed the hearing. The Department submitted an Attestation in lieu of attending the hearing on September 1, 2023 and September 26, 2023, but an authorized representative appeared on September 28, 2023. On October 6, 2023, ALJ Chiller issued Order No. 23-UI-238007, allowing claimant's late request for hearing and modifying decision # 599198 by concluding that claimant was eligible for benefits for the weeks from July 10 through 30, 2022 (weeks 28-22 through 30-22) but was not eligible for benefits for the weeks from July 31 through September 3, 2022 (weeks 31-22 through 35-22). On October 26, 2023, claimant filed an application for review of Order No. 23-UI-238007 with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is Order No. 23-UI-229542, a hearing order that relates to claimant's late request for hearing on decision # 195918, a matter that is

independent of this case but which claimant referenced in her written argument and hearing testimony. Order No. 23-UI-229542 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.

WRITTEN ARGUMENT: Claimant included the following written argument with her application for review:

I am not sure which option to chose but I want a hearing opened for unemployment benefits I received from February 2020-February 2021. When I had the hearing for the order and case number listed above I was trying to explain to the judge that there were 2 separate issues going on with my unemployment denials, which obviously was overlooked in this case and order. I was penalized for unemployment benefits that were paid to me as well as all of the COVID stimulus grants during this time because I was told there were 6 hours of work that was not reported when I absolutely did report these hours. The case and order numbers listed above are for the previous issue and I need to have a hearing on the denial for the listed dates. I NEED A HEARING!

Claimant’s argument is reflective of testimony offered at hearing about a matter independent of the failure to provide information issue. Specifically, claimant testified that in 2019 “right before COVID hit” she worked for an office for six hours, then “filed all through COVID because . . . no one was working,” and reported the six hours of work to the Department, but then “got a letter in the mail saying that [she] was being penalized for all of the grant money . . . during COVID.” September 1, 2023 Audio Record at 33:12, 35:34, 35:48. Claimant further stated that “there was a denial that I did receive regarding like all the unemployment I filed during COVID and all the grant money and this and that because they said I didn’t report that I worked at this office for six hours.” September 1, 2023 Audio Record at 36:40. Similarly, at the September 28, 2023 hearing session, the Department’s witness testified, “I would like to point out that there was a prior misrepresentation decision that was issued on . . . 11/15/22,” and that the misrepresentation decision prevented payment of benefits that claimant claimed as of mid-September 2022 and afterward. September 28, 2023 Audio Record at 24:48 to 26:00.

Review of Employment Department records indicates that on November 15, 2022, the Department issued decision # 195918, concluding that claimant had willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessed an overpayment of \$2,952 in benefits claimant was liable to repay, a \$885.60 monetary penalty, and a 23-week penalty disqualification from the receipt of future benefits. Claimant filed a late request for hearing on decision # 195918 on February 14, 2023. On July 5, 2023, ALJ Kangas issued Order No. 23-UI-229542, dismissing claimant’s request for hearing as late, subject to claimant’s right to renew the request by responding to an appellant questionnaire by July 19, 2023. *See* EAB Exhibit 1. On July 25, 2023, Order No. 23-UI-229542 became final without claimant having filed a response to the appellant questionnaire or an application for review.¹

¹ EAB has taken notice of the facts contained in this paragraph, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

It appears that the matter referenced in claimant's written argument and testimony relates to decision # 195918. To receive a hearing on the merits of that matter, claimant would need to file an application for review of Order No. 23-UI-229542 with EAB, and then establish good cause for filing the application for review late as well as good cause for filing her request for hearing on decision # 195918 late. If claimant files an application for review of Order No. 23-UI-229542 with EAB, she should provide a written statement with her application for review describing the circumstances, if any, that prevented her from filing the application for review on time. If claimant files an application for review of Order No. 23-UI-229542 with EAB, claimant also should describe the circumstances, if any, that prevented her from filing the request for hearing on decision # 195918 on time.

EAB reviewed the entire hearing record in this case. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

DECISION: Order No. 23-UI-238007 is affirmed.

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

DATE of Service: December 15, 2023

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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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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