

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1263

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On February 15, 2023, the Oregon Employment Department (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 ineligible for benefits for the week of January 29 through February 4, 2023 (week 05-23) and until the reason for the denial had ended. On March 7, 2023, the February 15, 2023, administrative decision became final without claimant having filed a request for hearing.

On August 24, 2023, claimant filed a late request for hearing on the February 15, 2023, administrative decision. ALJ Kangas considered claimant's request, and on September 5, 2023, issued Order No. 23-UI-235018, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 19, 2023. On September 25, 2023, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 23-UI-235018 with the Employment Appeals Board (EAB). On November 28, 2023, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late. This matter comes before EAB based upon claimant's September 25, 2023, application for review of Order No. 23-UI-235018.

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 claim comments from the Department's claims system. This evidence 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.

CONCLUSIONS AND REASONS: Order No. 23-UI-235018 is set aside and this matter remanded for a hearing on whether claimant’s late request for hearing on the February 15, 2023, administrative decision should be allowed and, if so, the merits of that decision.

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 request for hearing on the February 15, 2023, administrative decision was due by March 7, 2023. Because claimant did not file their request for hearing until August 24, 2023, the request was late. On their appellant questionnaire response, claimant answered the question, “If you did not file your hearing request (appeal) before the deadline stated in the administrative decision, why didn’t you?” by stating that they “did open [an] appeal through the phone with one of [the Department’s] employee[s].” EAB Exhibit 1 at 2. This suggests that claimant may have filed, or attempted to file, a request for hearing earlier than the August 24, 2023, request on record.

Further, a review of the Department’s claim records shows that on February 17, 2023, two days after the issuance of the February 15, 2023, administrative decision, a comment was entered into the claims system indicating that claimant had contacted the Department regarding the denial of benefits stemming from that decision, and that the representative to whom claimant spoke advised claimant that they could file an appeal. EAB Exhibit 1 at 3. Another comment, entered the same day, stated that a message from claimant, indicating a desire to appeal, had been received, and that the request had been forwarded to the team handling appeals. EAB Exhibit 1 at 3. On March 8, 2023, a comment was entered which stated, “Received hearing request and processed referral to OAH -IMS.” EAB Exhibit 1 at 3.

Here, “IMS” is presumed to refer to the Department’s iMatchSkills system, registration for which is part of the Department’s requirements that claimants register for work. Therefore, the March 8, 2023, comment most likely refers to a hearing request that claimant filed on or before March 8, 2023, regarding the February 15, 2023, administrative decision. If so, it is likely that the message claimant sent on February 17, 2023, as noted in one of the comments entered that day, was also regarding the February 15, 2023, administrative decision. Thus, it appears that claimant may have filed a timely request for hearing on the February 15, 2023, administrative decision. On remand, the ALJ should develop the record to show whether the comments discussed here referred to February 15, 2023, administrative decision, in order to determine whether claimant filed a timely request for hearing on that decision.

Order No. 23-UI-235018 therefore is set aside, and this matter remanded for a hearing on whether claimant’s request for hearing should be allowed and, if so, the merits of the February 15, 2023, administrative decision.

DECISION: Order No. 23-UI-235018 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: December 1, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-235018 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 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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