

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1272

Reversed & Remanded

PROCEDURAL HISTORY: On December 31, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving benefits effective July 12, 2020 (decision # 84755). On January 20, 2021, decision # 84755 became final without claimant having filed a request for hearing. On, December 3, 2021, the Department served notice of an administrative decision based in part on decision # 84755, concluding that claimant received benefits to which they were not entitled and assessing an overpayment of \$9,195 in regular unemployment insurance (regular UI) benefits that claimant was liable to repay to the Department through deduction from future benefits, and an overpayment of \$1,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 85402). On December 23, 2021, decision # 85402 became final without claimant having filed a request for hearing.

On September 25, 2023, claimant filed late requests for hearing on decisions # 84755 and 85402. ALJ Kangas considered claimant's requests, and on October 3, 2023, issued Orders No. 23-UI-237544 and 23-UI-237543, dismissing the requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by October 17, 2023. On October 21, 2023, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 23-UI-237544 and 23-UI-237543 with the Employment Appeals Board (EAB). On November 30, 2023, ALJ Kangas mailed letters to the parties stating that because the appellant questionnaire response was filed late, it would not be considered, and additional orders would not be issued. These matters come before EAB based upon claimant's October 21, 2023, applications for review of Orders No. 23-UI-237544 and 23-UI-237543.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-237544 and 23-UI-237543. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1271 and 2023-EAB-1272).

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) Decision # 84755, mailed on December 31, 2020, to claimant at their address of record on file with the Department, stated, “You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than January 20, 2021.” Order No. 23-UI 237544, Exhibit 1 at 2.

(2) Decision # 85402, mailed on December 3, 2021, to claimant at their address of record on file with the Department, stated, “If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before December 23, 2021, to be timely.” Order No. 23-UI 237543, Exhibit 1 at 3.

(3) Claimant filed their requests for hearing on decisions # 84755 and 85402 on September 25, 2023.

CONCLUSIONS AND REASONS: Orders No. 23-UI-237544 and 23-UI-237543 are set aside and the matters remanded for a hearing to determine whether to allow claimant’s late requests for hearing and, if so, the merits of decisions # 84755 and 85402.

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 # 84755 and 85402 were due by January 20, 2021, and December 23, 2021, respectively. Because claimant did not file their requests for hearing until September 25, 2023, the requests were late. However, claimant may have had good cause for filing their requests for hearing late.

Claimant stated in their appellant questionnaire response that they “never received” the “1st” administrative decision. EAB Exhibit 1 at 1. It can reasonably be inferred that claimant was referring to decision # 84755. While the response does not explicitly state whether claimant received decision # 85402, claimant stated that they first learned of the overpayments assessed by decision # 85402 in September 2023, when they contacted the Department about benefits from a subsequent claim being offset to satisfy the overpayments. EAB Exhibit 1 at 4. This suggests that claimant may not have received decision # 85402. If claimant’s requests for hearing were delayed because they did not receive either administrative decision and did not learn of their existence and their appeal rights until September 2023, this may have constituted a factor beyond claimant’s reasonable control that prevented timely filing. Further development of the record therefore is needed.

On remand, the ALJ should confirm whether each administrative decision was received, and, if not, inquire into what could have prevented claimant from receiving them, such as whether they were

properly addressed and whether claimant had problems receiving mail. Further inquiry should be made into whether claimant filed their requests for hearing within a seven-day “reasonable time” after learning of the existence of the administrative decisions and their right to appeal them.

Because further development of the record is necessary for a determination of whether claimant had good cause to file the late requests for hearing, Orders No. 23-UI-237544 and 23-UI-237543 are set aside, and these matters remanded for hearings on whether to allow the late requests for hearing on decisions # 84755 and 85402 and, if so, the merits of those decisions.

DECISION: Orders No. 23-UI-237544 and 23-UI-237543 are set aside and the matters remanded for further proceedings consistent with this order.

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

DATE of Service: December 6, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 23-UI-237544 and 23-UI-237543 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 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، می توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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