

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1330

Order No. 23-UI-242934 Reversed ~ Late Request for Hearing Allowed, Merits Hearing Required
Order No. 23-UI-242936 Reversed & Remanded

PROCEDURAL HISTORY: On January 26, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from September 12, 2021 through January 22, 2022 (weeks 37-21 through 03-22) and therefore was not eligible for unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 82744). On February 15, 2022, decision # 82744 became final without claimant having filed a request for hearing. On July 15, 2022, the Department served notice of an administrative decision, based in part on decision # 82744, assessing an overpayment of \$3,458 in regular unemployment insurance (regular UI) benefits that claimant was liable to repay the Department (decision # 153143). On July 21, 2022, claimant filed a late request for hearing on decision # 82744 and a timely request for hearing on decision # 153143. On November 29, 2023, ALJ Goodrich conducted hearings on decisions # 82744 and 153143. On December 7, 2023, ALJ Goodrich issued Order No. 23-UI-242934, dismissing claimant's request for hearing on decision # 82744 as late without good cause and leaving decision # 82744 undisturbed, and Order No. 23-UI-242936, affirming decision # 153143. On December 12, 2023, claimant filed applications for review of Orders No. 23-UI-242934 and 23-UI-242936 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-242934 and 23-UI-242936. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1331 and 2023-EAB-1330).

WRITTEN ARGUMENT: Claimant submitted two written arguments, one on December 18, 2023 and one on January 6, 2024. EAB considered claimant's December 18, 2023 written argument in reaching this decision. Claimant's January 6, 2024 written argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's January 6, 2024 written argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On April 19, 2021, claimant filed an initial claim for regular UI benefits. The Department determined claimant had a monetarily valid regular UI claim with a weekly benefit amount of \$182. Claimant claimed benefits for the weeks including September 12, 2021 through January 22, 2022 (weeks 37-21 through 03-22). These are the weeks at issue. The Department paid claimant \$182 for each of the weeks at issue for a total of \$3,458 in regular UI benefits.

(2) When claimant filed his initial claim, his address of record on file with the Department was an address on Manzanita Court in Tigard, Oregon. At some point prior to 2022, claimant moved from the Manzanita Court address to a different address, and then ultimately to an address on Buffalo Place in Tigard, Oregon.

(3) Although, upon moving away, claimant no longer resided at Manzanita Court, he still regarded Manzanita Court as his address of record. Claimant believed it was easier to “keep it the same” rather than update his driver’s license and various accounts to the Buffalo Place address. Order No. 23-UI-242934 Audio Record at 19:37. Claimant checked his mail at the Manzanita Court address weekly. The person who lived there would set claimant’s mail aside in a box in the garage and, once a week, claimant would come over and retrieve his mail from the box.

(4) For each of the weeks at issue, claimant reported on his weekly claim forms that he was able to work, available for work, and actively seeking work. Shortly after claimant claimed weeks 37-21 through 03-22, the Department gained information that led it to believe that claimant had been ill during the weeks at issue and therefore had not been available for work for those weeks.

(5) On January 26, 2022, the Department issued decision # 82744, concluding that claimant was not available for work during weeks 37-21 through 03-22 and therefore was not eligible to receive benefits for those weeks. The Department mailed decision # 82744 to claimant’s address on file with the Department, which was the Manzanita Court address. Decision # 82744 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 February 15, 2022.”¹

(6) Claimant did not receive decision # 82744 because it was not delivered to the Manzanita Court address. On February 15, 2022, decision # 82744 became final without claimant having filed a request for hearing on the administrative decision.

(7) On July 15, 2022, the Department issued decision # 153143, which assessed an overpayment of \$3,458 in regular UI benefits that claimant was liable to repay the Department. Decision # 153143 was based in part on decision # 82744, which had found that claimant was ill during the weeks at issue and concluded claimant was not available for work for those weeks and as a result was ineligible for benefits for those weeks. Order No. 23-UI-242934, Audio Record at 21:20.

(8) The Department mailed decision # 153143 to the Manzanita address. Claimant received decision # 153143 on July 21, 2022. When claimant received decision # 153143, he learned for the first time of the

¹ EAB has taken notice of this fact, which is 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.

existence of decision # 82744, and that the Department considered him to have been not available for work and therefore not eligible for benefits for the weeks at issue.

(9) On July 21, 2022, claimant “responded immediately” and filed a timely request for hearing on decision # 153143 and a late request for hearing on decision # 82744. Order No. 23-UI-242936, Audio Record at 23:05.

CONCLUSIONS AND REASONS: Order No. 23-UI-242934 is reversed, claimant’s late request for hearing is allowed, and a hearing on the merits of decision # 82744 is required. Order No. 23-UI-242936 is reversed, and the matter remanded for further proceedings consistent with this order.

Order No. 23-UI-242934 – Late Request for Hearing. 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. Good cause does not include “[f]ailure to receive a document due to not notifying the Employment Department . . . of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal[.]” OAR 471-040-0010(1)(b)(A).

On January 26, 2022, the Department mailed decision # 82744 to claimant at claimant’s address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on that decision was February 15, 2022. Claimant did not file a request for hearing on decision # 82744 until July 21, 2022. Accordingly, claimant’s request for hearing was late.

Order No. 23-UI-242934 concluded that claimant failed to establish good cause to extend the filing deadline to July 21, 2022. Order No. 23-UI-242934 at 3. The record does not support that conclusion.

Claimant established good cause to extend the filing deadline to July 21, 2022 and filed his request for hearing within a reasonable time. First, OAR 471-040-0010(1)(b)(A), which provides that good cause is not present if a person files a late appeal because they failed to receive a document due to not notifying the Department of an updated address, does not prohibit the conclusion that good cause was established in this case. Although claimant did not inform the Department that he resided at the Buffalo Place address rather than the Manzanita Court address, claimant regarded the Manzanita Court address as his address of record and had an arrangement in which he retrieved his mail from there on a weekly basis. Further, claimant testified that his driver’s license and various accounts were linked to the Manzanita Court address and that the Manzanita Court address remained where he received his mail as of the date of the November 29, 2023 hearing in this matter. Order No. 23-UI-242934, Audio Record at 19:37; 20:35. Thus, the record shows that claimant resided at the Buffalo Place address but his mailing address remained the Manzanita Court address. Therefore, the Buffalo Place address did not constitute “an updated address” within the meaning OAR 471-040-0010(1)(b)(A) and claimant’s failure to inform the Department of the Buffalo Place address does not bar claimant from establishing good cause for his late request for hearing on decision # 82744.

Next, the weight of the evidence supports that claimant failed to receive decision # 82744 because it was not delivered to the Manzanita Court address. It is possible that decision # 82744 was properly delivered to the Manzanita Court address but the person who lived there did not set it aside for claimant to retrieve. However, it is more likely than not that decision # 82744 was not delivered to the Manzanita Court address because, at hearing, claimant testified that under his arrangement of living at the Buffalo Place address but receiving mail at the Manzanita Court address, he had never failed to receive mail he was expecting. Order No. 23-UI-242934, Audio Record at 18:18. Furthermore, the record shows that the overpayment decision in these consolidated cases, decision # 153143, was mailed to the Manzanita Court address, claimant received it without incident, and claimant filed a timely request for hearing on that decision. Likewise, the notices of hearing which scheduled the hearings on decisions # 82744 and 153143 were both mailed to the Manzanita Court address,² and claimant successfully received those mailings as evidenced by his appearance at the hearings in these matters. The fact that numerous other documents pertaining to these matters were mailed to the Manzanita Court address, and that claimant successfully received them, suggests that claimant's failure to receive decision # 82744 was a result of its not being delivered to the address, rather than due to the person who lived there having failed to set it aside for claimant to retrieve.

Accordingly, claimant did not receive decision # 82744 because it was not delivered to the Manzanita Court address, which was a circumstance beyond his reasonable control. On July 21, 2022, claimant received decision # 153143 and learned for the first time of the existence of decision # 82744. On the same day, claimant filed a late request for hearing on decision # 82744, which was within a seven-day reasonable time. For these reasons, claimant established good cause to extend the deadline to file a request for hearing on decision # 82744 to July 21, 2022. Claimant's late request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of decision # 82744.

Order No. 23-UI-242936 – Overpayment. Following the merits hearing on decision # 82744, the determination set forth by decision # 82744 that claimant was ineligible to receive benefits for the weeks at issue may be modified or reversed. Therefore, Order No. 23-UI-242936 is reversed and remanded as well for a new hearing to consider the effect, if any, of the outcome of the merits hearing on decision # 82744 on claimant's alleged overpayment of benefits.

DECISION: Orders No. 23-UI-242934 and 23-UI-242936 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: January 19, 2024

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 23-UI-242934 or 23-UI-242936 or return these matters to EAB. Only a timely application for review of the respective subsequent order will cause the matter to return to EAB.

² EAB has taken notice of this fact, which is 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.

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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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