

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0030

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On October 9, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$2,416 overpayment that claimant was required to repay to the Department, a \$604 monetary penalty, and a 16-week penalty disqualification from future benefits (decision # 200264). On October 29, 2018, decision # 200264 became final without claimant having filed a request for hearing. On September 7, 2021, claimant filed a late request for hearing on decision # 200264.

ALJ Kangas considered claimant's request, and on September 27, 2021, issued Amended Order No. 21-UI-175672,¹ dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 11, 2021. On October 15, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Amended Order No. 21-UI-175672 with the Employment Appeals Board (EAB). On November 1, 2021, ALJ Kangas mailed a letter stating that OAH would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late. On November 18, 2021, EAB issued EAB Decision 2021-EAB-0932, reversing Amended Order No. 21-UI-175672 and remanding the matter for further proceedings.

On December 6, 2023, ALJ Fraser conducted a hearing and issued Order No. 23-UI-242775, re-dismissing claimant's request for hearing as late without good cause and leaving decision # 200264 undisturbed. On December 26, 2023, claimant filed an application for review of Order No. 23-UI-242775 with EAB.

¹ On September 13, 2021, ALJ Kangas issued Order No. 21-UI-174568, dismissing claimant's request for hearing as late. On September 20, 2021, the Office of Administrative Hearings (OAH) received notice that the copy of Order No. 21-UI-174568 mailed to claimant on September 13, 2021 was returned as undeliverable. Order No 21-UI-174568 and Amended Order No. 21-UI-175672 are identical except for the deadlines associated with each order and the address to which they were mailed.

FINDINGS OF FACT: (1) On November 17, 2017, claimant filed an initial claim for unemployment insurance benefits. His last weekly claim for benefits on that claim was filed for the week of April 8, 2018, through April 14, 2018 (week 15-18).

(2) On June 1, 2018, claimant completed a move from Oregon to California. He did not update his address of record with the Department. Claimant did not have a pending appeal involving unemployment insurance benefits at the time.

(3) On October 9, 2018, the Department mailed decision # 200264 to claimant's mailing address of record in Oregon. Claimant did not receive it because he lived in California.

(4) On October 17, 2019, a garnishment order was mailed to the employer, with a copy mailed to claimant's Oregon address. Claimant's copy was returned to the Department as undeliverable.

(5) On December 2, 2019, claimant called the Department to inquire about his wages being garnished. The Department's record of this conversation stated, in part, "Claimant verified the address. . . Claimant would like more information on the overpayment decision and my hearing. . . Began late hearing process." Transcript at 16-17. Claimant notified the Department of his current mailing address in California, but the Department did not update its records to reflect this. Claimant did not receive a copy of decision # 200264 thereafter, if one was sent.

(6) On September 7, 2021, claimant called the Department to inquire about his 2020 tax refund being intercepted to satisfy the overpayment. He was advised that there was no pending appeal of decision # 200264. Claimant filed a late request for hearing online the same day.

CONCLUSIONS AND REASONS: Claimant's late request for hearing is allowed and a hearing on the merits of decision # 200264 is required.

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. Under OAR 471-040-0010(1)(a)(A) and (b)(A), good cause for filing a late request for hearing includes "[f]ailure to receive a document because the Employment Department or Office of Administrative hearings mailed it to an incorrect address despite having the correct address," but does not include "[f]ailure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal."

The request for hearing on decision # 200264 was due by October 29, 2018. Because claimant did not file his request for hearing until September 7, 2021, the request was late. The order under review concluded that claimant was not prevented from timely filing his request for hearing by circumstances beyond his reasonable control or an excusable mistake. Order No. 23-UI-242775 at 3. The record does not support this conclusion.

The record shows that claimant was prevented from filing his request for hearing prior to the October 29, 2018, deadline because he did not receive decision # 200264 in the mail. More likely than not, claimant did not receive the decision because it was mailed to an address in Oregon where he no longer lived. Claimant last claimed Oregon unemployment insurance benefits in April 2018. He began a move to California later that month, which was completed by June 1, 2018. As he had no pending appeal at that time, his failure to update his mailing address with the Department does not preclude a finding of good cause pursuant to OAR 471-040-0010(1)(b)(A). Claimant's failure to receive decision # 200264 prior to the timely filing deadline was therefore a circumstance beyond his reasonable control that prevented timely filing. Accordingly, claimant has shown good cause to extend the deadline for timely filing.

Claimant first learned of the existence of the overpayment assessed in decision # 200264 on or about December 2, 2019, after his wages were garnished. Claimant contacted the Department and, more likely than not, advised the representative of his current address in California, but the Department's change of address was not recorded in the Department's computer system. It can reasonably be inferred from the representative's note regarding that call, "Began late hearing process," that claimant believed he did not need to take further action to request a hearing on decision # 200264. Claimant did not receive a copy of decision # 200264 at that point, likely due to the Department mailing the copy to claimant's former address despite having been provided the current address, if it mailed a copy at all. Therefore, the circumstances that prevented timely filing, claimant's failure to receive decision # 200264 and to adequately be advised of his right to appeal, had not yet ceased.

The record shows that on September 7, 2021, claimant called the Department to inquire about the overpayment because his tax refund had recently been intercepted to repay it. The Department's notes show that an appeal of decision # 200264 was discussed during the call. Claimant then filed a late request for hearing on decision # 200264 that day. It can reasonably be inferred from these facts that claimant learned on September 7, 2021, that his December 2, 2019, call to the Department had not resulted in a request for hearing being filed, and that he still needed to request a hearing on decision # 200264. Therefore, the circumstances that prevented timely filing only ceased at this time. Because claimant filed his request for hearing the same day, he did so within a "reasonable time."

For these reasons, claimant's late request for hearing is allowed, and a hearing on the merits of decision # 200264 is required.²

DECISION: Order No. 23-UI-242775 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: January 26, 2024

² The record suggests that an issue likely to be in dispute at the merits hearing is the amount recovered by the Department after decision # 200264 was issued, given that the Department issued a letter stating, "As of 12-11-19, the [overpayment] balance has been paid in full," yet claimant testified that a tax intercept was conducted in 2021. Exhibit 1 at 1; Transcript at 26. Claimant and the Department may wish to present additional evidence regarding that issue at the merits hearing.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-242775 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 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، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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