

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0040

Order No. 23-UI-233050 Reversed & Remanded

Order No. 23-UI-233073 Reversed ~ Late Request for Hearing Allowed, Merits Hearing Required

PROCEDURAL HISTORY: On May 28, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had earnings which exceeded their weekly benefit amount for each of the weeks including February 28, 2021, through March 27, 2021 (weeks 09-21 through 12-21) and therefore was ineligible to receive benefits for those weeks (decision # 83241). On June 17, 2021, decision # 83241 became final without claimant having filed a request for hearing. On July 6, 2022, the Department served notice of an administrative decision, based in part on decision # 83241, concluding that claimant received benefits to which they were not entitled, and assessing an overpayment of \$542 in Pandemic Emergency Unemployment Compensation (PEUC) benefits and \$600 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 94146). On July 26, 2022, decision # 94146 became final without claimant having filed a request for hearing. On March 24, 2023, claimant filed late requests for hearing on decisions # 83241 and 94146.

ALJ Kangas considered claimant's requests, and on August 14, 2023, issued Orders No. 23-UI-233050 and 23-UI-233073, dismissing claimant's requests for hearing on decision # 83241 and 94146, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by August 28, 2023. On September 4, 2023, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 23-UI-233050 and 23-UI-233073 with the Employment Appeals Board (EAB). On December 11, 2023, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue additional orders regarding these matters because the questionnaire response was late. These matters come before EAB based upon claimant's September 4, 2023, applications for review of Orders No. 23-UI-233050 and 23-UI-233073.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-233050 and 23-UI-233073. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0039 and 2023-EAB-0040).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant’s response to the appellant questionnaire and nine pages of medical records enclosed with claimant’s late requests for hearing. 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.

FINDINGS OF FACT: (1) On May 28, 2021, the Department mailed decision # 83241 to claimant’s address on file with the Department. Decision # 83241 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 June 17, 2021.” Order No. 23-UI-233050, Exhibit 1 at 2.

(2) On July 6, 2022, the Department mailed decision # 94146 to claimant’s address on file with the Department. Decision # 94146 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 July 26, 2022.” Order No. 23-UI-233073, Exhibit 1 at 3.

(3) In or around July 2022, claimant was diagnosed with cancer. Claimant began treatment which continued through at least January 2023.

CONCLUSIONS AND REASONS: Order No. 23-UI-233050 is set aside and this matter remanded for a hearing on whether claimant’s late request for hearing on decision # 83241 should be allowed and, if so, the merits of that decision. Order No. 23-UI-233073 is reversed and this matter remanded for a hearing on the merits of decision # 94146.

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 # 83241 and 94146 were due by June 17, 2021, and July 26, 2022, respectively. Because claimant did not file their requests for hearing on either decision until March 24, 2023, the requests were late.

On their appellant questionnaire response, claimant explained that they filed the requests for hearing late because they had been “dealing with chemotherapy & different cancer treatments... [and] lots of doctor [appointments].” EAB Exhibit 1 at 2. Claimant further stated that they were prompted to file the requests for hearing when they did because they were “finally feeling better & began to handle financial things.” EAB Exhibit 1 at 2. Given that the record shows that claimant had been diagnosed with cancer in or around July 2022, and that they were in treatment through at least January 2023, these statements suggest that claimant was unable to file the request for hearing on decision # 64146—which was issued on July 6, 2022—due to factors beyond their reasonable control. It can further be inferred that those

factors ceased once claimant had sufficiently recovered from the treatment, and that claimant filed the request for hearing on that decision as soon as they could once they had recovered. Therefore, the record shows that claimant, more likely than not, filed the request for hearing on decision # 94146 within the seven-day “reasonable time” period after the factors which prevented their timely filing ceased. As such, Order No. 23-UI-233073 is reversed, claimant’s late request for hearing on decision # 94146 is allowed, and claimant is entitled to a hearing on the merits of that decision.

Because decision # 83241 was issued in May 2021, more than a year before claimant’s diagnosis, the above circumstances do not explain why claimant filed the late request for hearing on that decision. On their request for hearing, claimant stated that they “...had to call [the Department] and go over [their] account multiple times with different people.” Order No. 23-UI-233050, Exhibit 2 at 2. It is possible that claimant’s reference to multiple calls to the Department indicates that they filed, or attempted to file, a request for hearing on decision # 83241 prior to March 24, 2023. However, further information is necessary to determine whether claimant had good cause to file the late request for hearing on decision # 83241 and, if so, whether they filed their request within a “reasonable time.” On remand, the ALJ should inquire as to when, if at all, claimant first received decision # 83241; if not, whether they were experiencing any issues with receipt of mail at the time the decision was mailed; on what date they first attempted to file a request for hearing on that decision, if they attempted to do so prior March 24, 2023; what prompted them to file the request when they did; and whether the health issues that delayed their request for hearing on decision # 94146 also impacted their ability to file a timely request for hearing on decision # 83241.

Order No. 23-UI-233050 therefore is reversed, and this matter remanded for a hearing on whether claimant’s late request for hearing on decision # 83241 should be allowed and, if so, the merits of that decision.

DECISION: Orders No. 23-UI-233050 and 23-UI-233073 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: January 10, 2024

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 23-UI-233050 and 23-UI-233073 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، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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