

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0094

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On July 12, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work, available for work, or actively seeking work from June 11 through July 8, 2023 (weeks 24-23 through 27-23) and was not eligible for benefits for those weeks and until the reason for the denial ended (decision # 84537). On August 1, 2023, decision # 84537 became final without claimant having filed a request for hearing. On November 17, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on November 27, 2023, issued Order No. 23-UI-241953, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by December 11, 2023. On December 10, 2023, claimant filed a timely response to the appellant questionnaire. ALJ Scott considered the response, and on January 18, 2024, issued Order No. 24-UI-245923, dismissing claimant's request for hearing as late without good cause, leaving decision # 84537 undisturbed. On January 22, 2024, claimant filed an application for review of Order No. 24-UI-245923 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when deciding whether to allow their late request for hearing because they did not include a statement declaring that they provided a copy of their argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). However, the argument raises an important due process issue regarding claimant's ability to claim benefits outside of the time frame covered by decision # 94537, which warrants clarification.

The written argument and claimant's appellant questionnaire response indicated that claimant filed their initial claim for benefits in June 2023 because they were beginning a period of maternity leave during which they were physically unable to perform any work. *See* Claimant's Written Argument at 1-2; Exhibit 3 at 4. Claimant's argument suggested that while they disagreed with the law's requirement that a claimant be able to work as a condition of eligibility for benefits, even during a period of maternity leave, claimant did not disagree that they were unable to work from June 11 through August 4, 2023.

Claimant filed weekly claims for some of the weeks that they were on leave, including weeks 24-23 through 27-23. On July 12, 2023, the Department issued decision # 84537, concluding that claimant did

not meet one or more of the legal requirements of being able to work, available for work, and actively seeking work during those weeks, and was therefore ineligible for benefits for those weeks “and until the reason for [the] denial has ended.” Exhibit 1 at 1. Claimant also filed a weekly claim for benefits for the week of July 9 through July 15, 2023 (week 28-23). It is reasonable to infer that claimant did not disagree with the conclusion that they were ineligible for benefits during maternity leave based on their inability to work, even if claimant disagreed with the law compelling that conclusion. It therefore is understandable that on or before the August 1, 2023, deadline to appeal, claimant did not request a hearing to contest the administrative decision as they did not disagree with its conclusions.

However, at some time after claimant returned to work, claimant separated from employment and wanted to file an additional claim for benefits. Claimant contacted the Department on November 17, 2023, but was told that they remained ineligible to receive benefits indefinitely due to decision # 84537. Claimant apparently did not file this additional claim, perhaps based on that information. Instead, claimant filed their late request for hearing later that day to contest the indefinite ineligibility for benefits applied to the weeks after week 27-23, the last week covered by decision # 84537. While claimant has not shown good cause to file the late request for hearing on decision # 84537, claimant must be afforded the opportunity to demonstrate to the Department that their inability to work ended at some time after week 27-23, thereby ending the period of ineligibility for benefits.

Claimant therefore may submit proof to the Department of when they became able to work following maternity leave. Upon receipt, the Department should, if supported by the proof submitted, retroactively end the period of ineligibility at the appropriate benefit week. If the Department declines claimant’s request to end the indefinite period of ineligibility, or ends it but continues to deny claimant benefits based on decision # 84537 for any week after week 27-23, the Department should issue a new, appealable decision regarding claimant’s eligibility for benefits after week 27-23. Claimant should also continue to file benefit claims for each week they seek benefits.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

DECISION: Order No. 24-UI-245923 is affirmed.

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

DATE of Service: February 27, 2024

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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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