

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0113

Reversed
Late Requests for Hearing Allowed
Merits Hearings Required

PROCEDURAL HISTORY: On June 15, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from May 21 through June 10, 2023 (weeks 21-23 through 23-23) and was not eligible for benefits for those weeks and until the reason for the denial ended (decision # 141207). Also on June 15, 2023, the Department served notice of an administrative decision concluding that claimant was not able to work from May 28 through June 10, 2023 (weeks 22-23 through 23-23) and was not eligible for benefits for those weeks and until the reason for the denial ended (decision # 141807). On July 5, 2023, decisions # 141207 and 141807 became final without claimant having filed requests for hearing. On July 28, 2023, claimant filed late requests for hearing. On January 3, 2024, ALJ Frank conducted a hearing, and on January 11, 2024, issued Orders No. 24-UI-245349 and 24-UI-245355, dismissing claimant's late requests for hearing, leaving decisions # 141207 and 141807 undisturbed.

On January 29, 2024, claimant filed applications for review of Orders No. 24-UI-245349 and 24-UI-245355 with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-245349 and 24-UI-245355. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0113 and 2024-EAB-0112).

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 January 29, 2024, and February 12, 2024, written arguments, submitted on his behalf by a representative, and marked as EAB Exhibit 1. A copy of this exhibit has been 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.

WRITTEN ARGUMENT: EAB considered claimant's written arguments when reaching this decision.

FINDINGS OF FACT: (1) On June 15, 2023, the Department mailed decision # 141207 to claimant’s address on file with the Department. Decision # 141207 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 July 5, 2023.” Order No. 24-UI-245349, Exhibit 1 at 2.

(2) On June 15, 2023, the Department mailed decision # 141807 to claimant’s address on file with the Department. Decision # 141807 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 July 5, 2023.” Order No. 24-UI-245355, Exhibit 1 at 2.

(3) Claimant is “illiterate and disabled” and “developmentally challenged.” EAB Exhibit 1 at 1, 3. As a result, “[r]eading, filling out forms and navigating technology are very difficult for” claimant. EAB Exhibit 1 at 1.

(4) Claimant received decisions # 141207 and 141807 and attempted to read and understand them to the best of his ability. Claimant did not understand that each of them carried an appeal deadline of July 5, 2023. On June 23, 2023, a Department representative advised claimant via phone about how to file requests for hearing on decisions # 141207 and 141807, and also advised claimant to continue claiming benefits in the meantime. Claimant did not file requests for hearing on decisions # 141207 or 141807 at that time.

(5) On July 28, 2023, claimant contacted the Department and spoke to a representative who again advised claimant how to file requests for hearing on decisions # 141207 and 141807.¹ Claimant filed his requests for hearing the same day.

CONCLUSIONS AND REASONS: Orders No. 24-UI-245349 and 24-UI-245355 are reversed and these matters remanded for hearings on the merits of decisions # 141207 and 141807.

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 # 141207 and 141807 were due by July 5, 2023. Because claimant did not file his requests for hearing until July 28, 2023, the requests were late. At hearing, claimant testified that he received the administrative decisions and read them when he received them. Audio Record at 16:27. Claimant further testified that he did not understand that the administrative decisions included an appeal deadline of July 5, 2023. Audio Record at 16:44. Claimant was unable to further explain in his testimony why he did not file timely requests for hearing on those decisions. However, the statements contained in claimant’s written arguments (submitted via a representative) explain that he is

¹ EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1). 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.

disabled, “developmentally challenged,” and illiterate.² When viewed with claimant’s assertion at hearing that he did not understand the hearing request deadline after he received the administrative decisions, it is reasonable to infer that claimant failed to file timely requests for hearing due to his developmental disability. This was a factor beyond claimant’s reasonable control that prevented him from filing timely requests for hearing.

Further, while a Department representative offered claimant advice on how to file the requests for hearing on June 23, 2023, claimant testified that the representative told him to “keep filing until I hear from [the Department]. Audio Record at 21:13. This suggests that, due to his disability, claimant did not understand how to appeal the administrative decisions at that time. About a month later, claimant spoke to another representative, who again advised him how to file the requests for hearing. Claimant did so the same day. This suggests that claimant was ultimately able, despite his disability, to understand how to file his requests for hearing after speaking to the representative on July 28, 2023, and that the factors that prevented his timely filing continued until that day. As claimant filed his requests the same day, he filed them within the seven-day “reasonable time” period.

For the above reasons, claimant had good cause for failing to file timely requests for hearing, and filed his requests within a “reasonable time.” Claimant’s late requests for hearing therefore are allowed, and claimant is entitled to hearings on the merits of decisions # 141207 and 141807.

DECISION: Orders No. 24-UI-245349 and 24-UI-245355 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: March 5, 2024

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 24-UI-245349 and 24-UI-245355 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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² At hearing, claimant demonstrated some ability to read written words, which suggests that he is not completely illiterate. However, this demonstration does not disprove claimant’s general proposition that he has a difficult time reading and comprehending the written word. Claimant’s assertion of illiteracy is therefore construed liberally for purposes of this analysis.



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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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.