

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0141

Reversed & Remanded

PROCEDURAL HISTORY: On March 16, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work the weeks of March 15, 2020, through May 23, 2020 (weeks 12-20 through 21-20) and was therefore not eligible to receive unemployment insurance benefits for those weeks and until the reason for the denial ended (decision # 123712). On April 5, 2021, decision # 123712 became final without claimant having filed a request for hearing. On December 7, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on December 27, 2023, issued Order No. 23-UI-244198, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 10, 2024. On January 11, 2024, claimant filed a late appellant questionnaire response and a timely application for review of Order No. 23-UI-244198 with the Employment Appeals Board (EAB). On February 12, 2024, ALJ Kangas mailed a letter to claimant stating that because the questionnaire response was late, it would not be considered and another order would not be issued regarding the matter. This matter comes before EAB based upon claimant's January 11, 2024, application for review of Order No. 23-UI-244198.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's appellant questionnaire response and 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.

FINDING OF FACT: (1) Decision # 123712, mailed to claimant's address of record on March 16, 2021, 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 April 5, 2021." Exhibit 1 at 2.

CONCLUSIONS AND REASONS: Order No. 23-UI-244198 is set aside and this matter remanded for a hearing to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 123712.

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 request for hearing on decision # 123712 was due April 5, 2021. Because claimant's request for hearing was filed December 7, 2023, the request was late. Claimant filed a response to the appellant questionnaire. In it, claimant wrote that they believed they had good cause for the late filing because, "I [didn't] receive a notice until debt collectors reached me." EAB Exhibit 1 at 2. Claimant also wrote, "[B]efore, with the original case I wasn't collecting benefits and wasn't required to change or notify you that I changed my address." EAB Exhibit 1 at 2. These statements suggest that claimant may not have received decision # 123712 when it was mailed, possibly due to moving to a new address after he stopped claiming benefits. If claimant was prevented from timely filing for this reason, it may have constituted a factor beyond claimant's reasonable control and therefore good cause to extend the deadline for timely filing. Accordingly, further development of the record is needed.

On remand, the ALJ should inquire as to whether claimant received decision # 123712 when it was sent and, if not, reasons why it may not have been delivered to them. If claimant moved to a new address prior to decision # 123712 being issued and did not update his address with the Department, inquiry should include whether claimant was claiming benefits or had a pending appeal at the time of the move. Inquiry should also be made into whether any other factors or circumstances prevented timely filing.

If good cause is found to extend the deadline for timely filing, further inquiry should be made to determine whether claimant's request for hearing was filed within a seven-day "reasonable time" after the factors that prevented timely filing ceased. Claimant's late request for hearing and appellant questionnaire response suggest that claimant may have been pursuing appeals of other administrative decisions closely related to decision # 123712 in 2022 and 2023, potentially including an overpayment based, in part, on decision # 123712. Exhibit 2 at 1; EAB Exhibit 1 at 2. Inquiry should therefore include whether claimant was informed of decision # 123712 and his appeal rights therefrom at any time prior to filing his December 7, 2023, request for hearing, and whether claimant's earlier requests for hearing on the other matters should have been construed as a request for hearing on decision # 123712.

For these reasons, Order No. 23-UI-244198 is set aside and this matter remanded for a hearing to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 123712.

DECISION: Order No. 23-UI-244198 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: February 15, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-244198 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 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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