

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0176

Reversed and Remanded

PROCEDURAL HISTORY: On October 11, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective January 16, 2022 (decision # 144910). Also on October 11, 2022, the Department served notice of an administrative decision concluding that claimant was not able to work during the weeks including September 18, 2022, through October 1, 2022 (weeks 38-22 through 39-22) and was therefore not eligible to receive benefits for those weeks and until the reason for the denial ended (decision # 150439). On October 31, 2022, decisions # 144910 and 150439 became final without claimant having filed requests for hearing on either decision.

On March 28, 2023, claimant filed a late request for hearing on decision # 144910. On April 24, 2023, claimant filed a late request for hearing on decision # 150439. ALJ Kangas considered claimant's requests, and on August 1, 2023, and August 9, 2023, issued Orders No. 23-UI-232013 and 23-UI-232792, respectively dismissing claimant's requests for hearing on decisions # 144910 and 150439 as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire. The appellant questionnaire responses for Orders No. 23-UI-232013 and 23-UI-232792 were due by August 15, 2023, and August 23, 2023, respectively. On August 18, 2023, claimant submitted an appellant questionnaire response which was late as to Order No. 23-UI-232013 and timely as to Order No. 23-UI-232792, and timely applications for review of both Orders with the Employment Appeals Board (EAB).

On October 17, 2023, ALJ Kangas mailed a letter to the parties stating that because claimant's appellant questionnaire response was late as to Order No. 23-UI-232013, the response would not be considered and another order would not be issued with regard to that matter. However, ALJ Scott considered claimant's appellant questionnaire response as to Order No. 23-UI-232792, and on January 31, 2024, issued Order No. 24-UI-246902, cancelling Order No. 23-UI-232792 and re-dismissing claimant's request for hearing on decision # 150439 as late without good cause. On February 14, 2024, claimant filed an application for review of Order No. 24-UI-246902 with EAB. These matters come before EAB based upon claimant's August 15, 2023, application for review of Order No. 23-UI-232013, and February 14, 2024, application for review of Order No. 24-UI-246902, both of which were timely.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders 23-UI-232013 and 24-UI-246902. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0265 and 2024-EAB-0176).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the statement and attachments claimant included with their application for review of Order No. 24-UI-246902, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. The statement is necessary to complete the record as part of claimant’s appellant questionnaire response. 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 October 11, 2022, decisions # 144910 and 150439 were mailed to claimant’s mailing address of record on file with the Department. Each decision 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 October 31, 2022.” Order No. 24-UI-246902, Exhibit 1 at 2; Order 23-UI-232013, Exhibit 1 at 2. Claimant did not receive either administrative decision because claimant did not reside at the address on file with the Department.

(2) Claimant claimed benefits for the week of October 2, 2022, through October 8, 2022 (week 40-22) on October 10, 2022, and the week of October 9, 2022, through October 15, 2022 (week 41-22) on October 17, 2022. Claimant then stopped claiming benefits for several months. The Department did not pay claimant benefits for weeks 40-22 and 41-22.¹

(3) At some time prior to decisions # 144910 and 150439 being issued, claimant “had to leave [their] residence” and was “homeless with no mailing address” until later obtaining a PO box. EAB Exhibit 1 at 1. Claimant updated their address with the Department in March 2023 when filing a reopened claim.

CONCLUSIONS AND REASONS: Orders 23-UI-232013 and 24-UI-246902 are set aside and the matters remanded for a hearing to determine whether claimant’s late requests for hearing should be allowed and, if so, the merits of decisions # 144910 and 150439.

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. “Good cause” does not include failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is

¹ EAB has taken notice of these facts, which are 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 facts will remain in the record.

claiming benefits or if the person knows, or reasonably should know, of a pending appeal. OAR 471-040-0010(1)(b)(A).

The requests for hearing on decisions # 144910 and 150439 were due October 31, 2022. Because claimant's requests for hearing were filed March 28, 2023, and April 24, 2023, respectively, the requests were late. However, the record shows that claimant may have been prevented from timely filing the requests due to circumstances beyond claimant's reasonable control or an excusable mistake.

Claimant did not file timely requests for hearing because they did not receive decisions # 144910 and 150439 in the mail. Claimant asserted in their questionnaire response that they did not reside at the address on file with the Department on October 11, 2022, the day decisions # 144910 and 150439 were mailed. Claimant claimed benefits for weeks 40-22 and 41-22 on October 10, 2022, and October 17, 2022, respectively. Therefore, claimant was responsible for updating their address with the Department at the time decisions # 144910 and 150439 were mailed. Claimant's statement that they were "homeless" and unable to afford a PO box suggests that factors beyond claimant's reasonable control may have prevented claimant from updating their address with the Department. Further development of the record is therefore needed to determine whether good cause exists to extend the deadline for timely filing despite the provisions of OAR 471-040-0010(1)(b)(A).

On remand, inquiry should focus on when claimant last was able to receive mail at the address to which the administrative decisions were mailed. It should also include when claimant next secured a place to receive mail, such as the PO box, and where and how, if at all, claimant received mail in the interim. The record should also be developed as to why claimant stopped claiming benefits the week after the administrative decisions were mailed, whether claimant inquired at that time why benefits had not been paid and, if not, why claimant did not inquire. Any other factors that prevented claimant from timely updating their address with the Department or from requesting a hearing should also be considered, as well as information about when all such factors ceased.

Further, if good cause is found to extend the deadline for timely filing, additional inquiry should be made to determine whether claimant's requests for hearing were filed within a reasonable time after the factors that prevented timely filing ceased. This should include when claimant received copies of each administrative decision or otherwise learned of each decision and the appeal rights therefrom. Additionally, inquiry should be made into whether claimant filed or attempted to file a request for hearing on decision # 150439 prior to April 24, 2023 and, if not, why claimant did not do so on March 28, 2023—the day they requested a hearing on decision # 144910—and whether an excusable mistake further delayed filing of claimant's request for hearing on decision # 150439 after the initial factors that prevented timely filing ceased.

For these reasons, Orders 23-UI-232013 and 24-UI-246902 are set aside and the matters remanded for a hearing to determine whether claimant's late requests for hearing should be allowed and, if so, the merits of decisions # 144910 and 150439.

DECISION: Orders 23-UI-232013 and 24-UI-246902 are set aside and the matters remanded for further proceedings, as clarified herein.

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

DATE of Service: March 20, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders 23-UI-232013 and 24-UI-246902 or return these matters to EAB. Only a timely application 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 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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