

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0191

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On October 24, 2023, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report (WPBR) concluding that claimant had not worked sufficient hours or earned sufficient wages in their base year to qualify for a monetarily valid unemployment insurance claim. On November 3, 2023, the October 24, 2023, WPBR became final without claimant having filed a request for hearing. On January 29, 2024, claimant submitted an email request for help through the Department's online webform, which the Department construed as a late request for hearing on the October 24, 2023, WPBR. ALJ Kangas considered claimant's request, and on February 5, 2024, issued Order No. 24-UI-247271, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 19, 2024. On February 20, 2024, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 24-UI-247271 with the Employment Appeals Board (EAB). On February 21, 2024, ALJ Kangas mailed a letter to claimant stating that because the appellant questionnaire response was late, it would not be considered and further orders would not be issued in the matter. This matter comes before EAB based upon claimant's February 20, 2024, application for review of Order No. 24-UI-247271.

EVIDENTIARY MATTER: EAB has considered two pieces of additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The first piece of additional evidence is the appellant questionnaire response claimant provided with their application for review, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. The second piece of additional evidence is an excerpt of Department records showing certain wages claimant may have earned during their base year that were reported to the Department as attributable to claimant but under a different last name. This evidence has been marked as EAB Exhibit 2, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 or EAB Exhibit 2 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 14, 2023, claimant filed an initial claim for unemployment insurance benefits. The Department processed claimant's initial claim on October 23, 2023. The Department determined that the claim was monetarily non-valid, and a representative entered a claim comment in Department records stating, "QWAGES with 2 different last names, clmt did not provide any other names. No contact with clmt. Did not submit ERDT."¹

(2) At the time claimant's initial claim was processed, Department records reflected that certain wages were reported to the Department as wages claimant may have earned during their base year but under a different last name. *See* EAB Exhibit 2 at 1.

(3) On October 24, 2023, the Department mailed a Wage and Potential Benefit Report (WPBR) to claimant at claimant's address on file with the Department. The WPBR concluded that claimant had not worked sufficient hours or earned sufficient wages in their base year to qualify for a monetarily valid unemployment insurance claim.

(4) Claimant did not receive the October 24, 2023, WPBR.

(5) After filing her initial claim, claimant filed weekly claims for benefits each week. The Department did not pay claimant benefits and claimant did not receive any "letter of rejection" stating that their claim was non-valid. Exhibit 2 at 2. When claimant filed their initial claim, they understood that "the process could take months" and were diligent about checking their mail for any letter or notice denying the initial claim. EAB Exhibit 1 at 2. Nevertheless, claimant did not receive a "denial letter" on their initial claim or a request for more information. EAB Exhibit 1 at 2.

(6) In late January 2024, claimant discovered that when they attempted to file a weekly claim for benefits, the Department's online system would not allow claimant to submit the claim. Exhibit 2 at 2. Claimant tried contacting the Department by telephone but waited on hold for four hours and "could not understand the person on the line due to the agency phone issues." EAB Exhibit 2 at 2.

(7) On January 29, 2024, claimant submitted an email request for help through the Department's online webform stating as follows:

I submitted my first claim in October when my company downsized. I never received a rejection letter. I continued to file weekly. I haven't received any money or letter of rejection. Now I am not being allowed to file weekly claims online. My savings is now gone. How do I get his resolved. When I spoke to my former employer they said that they hadn't received anything from you.

EAB Exhibit 1 at 3-4.

(8) The Department treated claimant's January 29, 2024, email via the webform as a request for hearing on the October 24, 2023, WPBR. Exhibit 2 at 2.

¹ EAB has taken notice of the facts set forth in this paragraph, 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 fact will remain in the record.

CONCLUSIONS AND REASONS: Order No. 24-UI-247271 is reversed, claimant's late request for hearing is allowed, and a hearing on the merits of the October 24, 2023, WPBR is required.

ORS 657.266(5) provides that the Department's initial determination on a new claim for benefits becomes final unless a party files a request for hearing within 10 days after the date the determination is mailed. ORS 657.875 provides that the 10-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 10-day deadline for claimant to file a request for hearing on the October 24, 2023, WPBR was November 3, 2023. Because claimant did not request a hearing until January 29, 2024, the request was late.

Claimant established good cause to extend the deadline to file a request for hearing on the October 24, 2023, WPBR. Claimant did not receive the October 24, 2023, WPBR in the mail. Claimant expected the process to "take months," and checked their mail diligently but never received any "denial letter" stating their initial claim was non-valid. The fact that claimant did not receive the October 24, 2023, WPBR was a factor beyond their reasonable control that prevented a timely filing. Having not received the WPBR, claimant was unaware of the deadline to appeal it. The evidence submitted shows claimant remained unaware of the WPBR even as of the date claimant sent their January 29, 2024, email via the Department's webform, which the Department treated as a request for hearing. Claimant knew only at that time that the Department's system no longer allowed them to file weekly claims. Thus, claimant's non-receipt of the October 24, 2023, WPBR and resulting lack of awareness of the appeal deadline were circumstances beyond their reasonable control that prevented a timely filing. Further, claimant's January 29, 2024, email request for help using the Department's webform, which was treated as a late request for hearing, was filed within a reasonable time because as of that date claimant remained unaware of October 24, 2023, WPBR, so the circumstances beyond claimant's control were still present.

Accordingly, claimant established good cause to extend the deadline to file a request for hearing on the October 24, 2023, WPBR to January 29, 2024. Claimant's late request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of the October 24, 2023, WPBR.

In addition to appearing at the merits hearing that will be scheduled in this case, claimant may wish to contact the Department regarding the claim comment, "QWAGES with 2 different last names, clmt did not provide any other names. No contact with clmt. Did not submit ERDT." The comment suggests that certain wages claimant may have earned during their base year were reported to the Department as attributable to claimant but under a different last name and that the Department excluded the wages from its determination of whether claimant had a monetarily valid claim without contacting claimant to inquire about claimant's last name. Claimant may wish to contact the Department to verify their base year wages earned and any alternate or additional last names they may have. Should the Department conclude that claimant has a monetarily valid initial claim for benefits, claimant may wish to request the Department allow claimant to file weekly claims for benefits for the weeks beginning with the week in which the online system stopped allowing claimant to file weekly claims.

DECISION: Order No. 24-UI-247271 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 25, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-247271 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 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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