

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0200

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On August 23, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$3,690 in Pandemic Unemployment Assistance (PUA) benefits, \$5,400 in Federal Pandemic Unemployment Compensation (FPUC) benefits, and \$1,800 in Lost Wages Assistance (LWA) benefits that claimant was required to repay to the Department, a \$2,727 monetary penalty, and a 36-week penalty disqualification from future benefits. On September 13, 2021, the August 23, 2021, administrative decision became final without claimant having filed a request for hearing. On May 5, 2022, claimant filed a late request for hearing on the August 23, 2021, administrative decision. ALJ Kangas considered claimant's request, and on January 30, 2024, issued Order No. 24-UI-246815, dismissing the request as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 13, 2024. On February 20, 2024, claimant filed an application for review of Order No. 24-UI-246815 with the Employment Appeals Board (EAB).¹

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is a seven-page packet of documents 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. 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 August 23, 2021, the Department mailed the August 23, 2021, administrative decision to claimant's address on file with the Department. The August 23, 2021,

¹ Claimant did not include a response to the appellant questionnaire with their application for review. However, claimant attached a seven-page packet of miscellaneous documents to the application for review. *See* EAB Exhibit 1 at 1-7.

administrative decision stated, “Any appeal from this decision must be filed on or before September 13, 2021, to be timely.” Exhibit 1 at 1.

(2) Claimant received the August 23, 2021, administrative decision shortly after its August 23, 2021, mailing date.

(3) On September 13, 2021, the August 23, 2021, administrative decision became final without claimant having filed a request for hearing.

(4) On May 5, 2022, claimant filed a late request for hearing on the August 23, 2021, administrative decision.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing is dismissed and the August 23, 2021, administrative decision remains undisturbed.

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 deadline to file a timely request for hearing on the August 23, 2021, administrative decision was September 13, 2021. Because claimant did not file their hearing request on the August 23, 2021, administrative decision until May 5, 2022, the request was late.

Claimant failed to show good cause for filing a late hearing request on the August 23, 2021, administrative decision. Claimant did not provide answers to the questions set forth in the appellant questionnaire attached to Order No. 24-UI-246815. Instead, claimant attached a seven-page packet of miscellaneous documents to their application for review. *See* EAB Exhibit 1. The documents consist of a copy of the August 23, 2021, administrative decision, the cover letter claimant sent the Department when they filed their late appeal on May 5, 2022, a doctor’s note, and a PUA determination the Department issued that concluded claimant was not eligible for PUA, along with claimant’s cover letter requesting a hearing on that PUA determination. EAB Exhibit 1 at 1-7. These documents do not explain why claimant failed to appeal the August 23, 2021, administrative decision by the September 13, 2021, deadline. However, because a copy of the August 23, 2021, administrative decision is included in the packet, the submission suggests that claimant received the August 23, 2021, administrative decision after the Department mailed it.

Another source of evidence is a cover letter and multiple page timeline that claimant faxed to the Department on May 5, 2022, when they filed their late request for hearing on the August 23, 2021, administrative decision. *See* Exhibit 2 at 2-10. The cover letter does not state why claimant was filing their hearing request late. The timeline has an entry for the August 23, 2021, administrative decision, and expresses disagreement with the decision’s findings, but does not indicate that claimant had not received it after it was mailed. Exhibit 2 at 2, 4. The timeline also shows that claimant received a number of overpayment billing statements relating to the overpayment established by the August 23,

2021, administrative decision between August 23, 2021 and the May 5, 2022 appeal date. Exhibit 2 at 5-10.

Given that a copy of the August 23, 2021, administrative decision was included in claimant's seven-page packet, and that the decision was mentioned in claimant's timeline without any indication that it was not received or that claimant for any other reason was unable to timely appeal it, the weight of evidence supports that claimant received the August 23, 2021, administrative decision shortly after it was mailed. Thus, claimant received the August 23, 2021, administrative decision shortly after it was mailed and did not show that factor beyond their control or an excusable mistake prevented them from filing a request for hearing on the administrative decision by September 13, 2021.

Accordingly, claimant failed to establish good cause to extend the deadline to file a request for hearing on the August 23, 2021, administrative decision. Claimant's late request for hearing on the August 23, 2021, administrative decision is therefore subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 24-UI-246815 is affirmed.

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

DATE of Service: March 22, 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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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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