

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0223

Reversed & Remanded

PROCEDURAL HISTORY: On January 4, 2024, 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 a \$1,594 overpayment of regular unemployment insurance benefits that claimant was required to repay to the Department, a \$239.10 monetary penalty, and a 9-week penalty disqualification from future benefits (decision # 193646). On January 24, 2024, decision # 193646 became final without claimant having filed a request for hearing. On January 29, 2024, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on February 5, 2024, issued Order No. 24-UI-247298, dismissing claimant's request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 19, 2024. On February 21, 2024, claimant filed a late response to the appellant questionnaire and a timely application for review with the Employment Appeals Board (EAB). On February 26, 2024, ALJ Kangas mailed a letter to the parties stating that because the appellant questionnaire response was late, it would not be considered and another order would not be issued in the matter. This matter comes before EAB based upon claimant's February 21, 2024, application for review of Order No. 24-UI-247298.

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 response to the appellant questionnaire 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 # 193646, mailed to claimant's address of record on file with the Department on January 4, 2024, stated, "See enclosed form for appeal rights. To be timely, any appeal from this decision must be filed on or before JANUARY 24, 2024." Exhibit 1 at 1 (emphasis in

original). Claimant's request for hearing was filed by fax on January 29, 2024, three business days after it was due.¹

CONCLUSIONS AND REASONS: Order No. 24-UI-247298 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 # 193646.

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.

OAR 471-040-0005(4)(c) (July 15, 2018) provides, "When [a request for hearing is] filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, or improbable, in which case the fax receipt date stamped or written by the agency employee, if available, shall be the date of filing. If a filing date cannot otherwise be determined, the most probable date of faxing shall be the date of filing."

Claimant's request for hearing on decision # 193646 was filed by fax. The Department's fax equipment did not automatically encode the date of receipt on the fax, but it was hand-stamped as received "JAN 30, 2024." Exhibit 2 at 2. The fax coversheet was dated by claimant "1-29-2024." Exhibit 2 at 4. Claimant wrote in their appellant questionnaire response that the request for hearing was filed "1/29/24." EAB Exhibit 1 at 1. Claimant included two fax confirmations with their questionnaire response showing an encoded date from the sending fax machine of "01/29." EAB Exhibit 1 at 3-4. This evidence is sufficient to conclude, in accordance with OAR 471-040-0005(4)(c), that claimant's request for hearing was filed January 29, 2024, and the facts have been found accordingly.

The request for hearing on decision # 193646 was due by January 24, 2024. Claimant's request for hearing was filed January 29, 2024, and therefore the request was late. However, good cause may exist to extend the deadline for timely filing and further development of the record is therefore needed.

Claimant wrote in their appellant questionnaire response that they received decision # 193646 on "10/23 – 12-23 – 1/24." EAB Exhibit 1 at 1. It is unclear why claimant wrote multiple dates of receipt, two of which preceded the January 4, 2024, issuance of decision # 193646. Nonetheless, this response suggests that claimant may have received decision # 193646 on January 24, 2024, the deadline by which to appeal. Claimant further wrote in their questionnaire response, "Now this one is late. Why because of the ice storm and delayed mail service in Springfield." EAB Exhibit 1 at 2. Claimant also wrote in their request for hearing, "P.S. Sorry about the delay of return mail. The winter storm played effect." Exhibit 2 at 3. These statements suggest that even if claimant received decision # 193646 within the timely filing period, claimant may have been prevented by weather conditions or other factors from filing a request for hearing by the deadline.

¹ January 24, 2024 was a Wednesday, and January 29, 2024 was a Monday, with no intervening holidays.

On remand, inquiry should be made into when claimant received decision # 193646 and, if after January 24, 2024, whether factors beyond claimant's reasonable control delayed receipt. If received on or before January 24, 2024, inquiry should also be made into whether weather conditions or any other factors beyond claimant's reasonable control prevented claimant from filing a request for hearing by the deadline. If good cause is found to extend the deadline for timely filing, further inquiry should be conducted to determine whether claimant's late request for hearing was filed within a "reasonable time" after the factors that prevented timely filing ceased. If possible, the Department should also clarify whether it instituted any grace period for filing deadlines due to weather-related closures and, if so, whether the three business days that elapsed from the due date to the filing date at issue here fell within such a period.

For these reasons, Order No. 24-UI-247298 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 # 193646.²

DECISION: Order No. 24-UI-247298 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: March 26, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-247298 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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² Claimant has a pending request to reopen a hearing on the separation administrative decision (decision # 74443) which forms the basis for the overpayment at issue in decision # 193646. It may be beneficial to the parties and the Office of Administrative Hearings (OAH) for the remand hearing on this matter to accompany or follow proceedings on that matter.



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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