

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0272

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On April 7, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from March 19 through 25, 2023 (week 12-23) and was ineligible for benefits for that week (decision # 95103). Also on April 7, 2023, the Department served notice of an administrative decision concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective March 5, 2023 (decision # 93624). On April 27, 2023, decisions # 95103 and 93624 became final without claimant having filed a request for hearing.

On December 7, 2023, claimant filed late requests for hearing on decisions # 95103 and 93624. ALJ Kangas considered claimant's requests, and on December 19 and 20, 2023 issued Orders No. 23-UI-243776 and 23-UI-243800, dismissing the requests as late, subject to claimant's right to renew the requests by responding to appellant questionnaires by January 2 and 3, 2024. On December 30, 2023, claimant filed a timely response to the appellant questionnaires. ALJ Scott considered the response, and on February 29, 2024, issued Orders No. 24-UI-249212 and 24-UI-249210, re-dismissing claimant's requests for hearing as late without good cause. On March 14, 2024, claimant filed applications for review of Orders No. 24-UI-249212 and 24-UI-249210 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-249212 and 24-UI-249210. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0273 and 2024-EAB-0272).

FINDINGS OF FACT: (1) Decision # 95103, mailed to claimant's address of record on file with the Department on April 7, 2023, 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 27, 2023." Order No. 24-UI-249212, Exhibit 1 at 2.

(2) Decision # 93624, mailed to claimant's address of record on file with the Department on April 7, 2023, 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 27, 2023." Order No. 24-UI-249210, Exhibit 1 at 2.

(3) Claimant received decisions # 95103 and 93624. Claimant either did not disagree with the conclusions in those decisions, or disagreed with them but did not desire to appeal them because claimant had found new employment and was not claiming benefits.

(4) On November 12, 2023, claimant separated from the subsequent employment and filed a reopened claim for benefits soon thereafter. Benefits were not paid on the reopened claim due, at least in part, to the disqualification imposed by decision # 93624. Claimant believed their earnings from subsequent employment were sufficient to end the disqualification prior to the week in which the claim was reopened.

(5) On December 7, 2023, claimant filed a request for hearing in order to challenge the Department's apparent determination that claimant did not have sufficient earnings to requalify for benefits prior to the reopening of their claim. That filing was treated as late requests for hearing on # 95103 and 93624, though these administrative decisions did not contain conclusions on the issue of requalification.

CONCLUSIONS AND REASONS: Claimant's late requests for hearing are dismissed.

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.

Requests for hearing on decisions # 95103 and 93624 were due by April 27, 2023. Claimant filed their requests for hearing on December 7, 2023, and therefore the requests were late. For the reasons explained herein, claimant did not show good cause to extend the timely filing deadline.

Claimant filed a single response to the appellant questionnaire and, as decisions # 95103 and 93624 were mailed to claimant on the same date, it is reasonable to infer that the response was intended to explain the reasons for late filing as to both decisions. Claimant wrote in response to a question asking why the requests for hearing were not filed before the deadline, "I found a job with Stinger Transport [the employer]. I then found more work with Grizzly Transport and stayed there. I had no reason to appeal because I was working steady until November 12, 2023." Exhibit 3 at 5. This suggests that to the extent claimant intended their requests for hearing to apply to decisions # 95103 and 93624, the requests were late due to claimant not understanding the implications of those decisions, particularly with regard to the work separation disqualification. OAR 471-040-0010(b)(B) provides that "[n]ot understanding the implications of a decision or notice when it is received" is not good cause for late filing. As this was claimant's explanation for the late filing, claimant has not shown good cause to extend the filing deadline, and the requests for hearing are dismissed.

Claimant should note that even had their late request for hearing on decision # 93624 been allowed, the hearing on the merits of that decision would only have addressed whether claimant quit or was discharged from Stinger Transport, and whether claimant had good cause to quit, or whether claimant was discharged for misconduct. The hearing would not have addressed whether or when claimant had earned sufficient wages following that work separation for any disqualification resulting from that separation to end. The Department's records suggest that claimant may have earned at least four times his weekly benefit amount in wages in the second quarter of 2023 following their separation from Stinger Transport, and that the Department mailed claimant a letter on December 1, 2023 seeking further information in order to determine whether and when claimant may have requalified for benefits, without receiving a response.¹ **Claimant may therefore wish to contact the Department to provide the requested documentation supporting their requalification for benefits.**

DECISION: Orders No. 24-UI-249212 and 24-UI-249210 are affirmed.

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

DATE of Service: April 18, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.

¹ EAB has taken notice of this fact which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). 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.



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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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.