

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0289

Reversed & Remanded

PROCEDURAL HISTORY: On September 7, 2023, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report (WPBR) concluding that claimant had a monetarily valid claim for regular unemployment insurance (regular UI) benefits with a maximum benefit amount of \$13,442. On September 17, 2023, the WPBR became final without claimant having filed a request for hearing. On February 20, 2024, claimant filed a request for hearing that was construed as a late request for hearing on the September 7, 2023, WPBR. ALJ Kangas considered claimant's request, and on March 4, 2024, issued Order No. 24-UI-249329, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 18, 2024. On March 21, 2024, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 24-UI-249329 with the Employment Appeals Board (EAB).

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 appellant questionnaire response 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) The WPBR, mailed to claimant's address of record on file with the Department on September 7, 2023, stated, "This report becomes final unless you request redetermination of the report or request a hearing within 10 days." Exhibit 1 at 1.

(2) Claimant stated in their request for hearing that they were "writing to appeal that my claims benefit amount of \$517 per week be extended to... April 2024" due to "financial distress and hardships." Exhibit 2 at 12. The request was filed on February 20, 2024.

CONCLUSIONS AND REASONS: Order No. 24-UI-249329 is set aside and the matter remanded for a hearing to determine whether claimant's late request for hearing should be allowed and, if so, the merits of the WPBR or other administrative decision that claimant intended to appeal.

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.

ORS 657.150(5) provides, "Benefits paid to an eligible individual in a benefit year shall not exceed 26 times the individual's weekly benefit amount, or one-third of the base year's wages paid, whichever is the lesser. If such amount is not a multiple of \$1, it shall be computed to the next lower multiple of \$1."

The request for hearing on the September 7, 2023 WPBR was due by September 17, 2023. Because claimant's request for hearing was filed February 20, 2024, the request was late.

As a preliminary matter, it is unclear from claimant's hearing request and other filings whether claimant intended to appeal the WPBR or some other administrative decision issued by the Department. Claimant's filings do not necessarily suggest disagreement with the calculation of the weekly benefit amount or maximum benefit amount as stated in the WPBR, or the earnings underlying those calculations. Instead, they suggest that claimant wanted the Department to pay benefits in excess of the maximum benefit amount because claimant was close to exhausting, and has since exhausted, those benefits, though claimant's benefit year does not end until August 31, 2024. *See* Exhibit 2 at 5. The law does not permit the Department to pay UI benefits to a claimant after the maximum benefit has been paid in a benefit year, regardless of financial need or any other circumstances.¹ However, because the subject of claimant's request for hearing remains unclear, and the request could possibly have been intended to contest the wages or benefit calculations in the WPBR, further development of the record is warranted.

On remand, the ALJ should determine if the WPBR is the administrative decision claimant intended to appeal. If claimant intended to appeal the WPBR so as to challenge the listed wages or benefit amount calculations, inquiry should be made as to whether and when claimant received the WPBR, whether they disagreed with the WPBR when it was received, what factors or circumstances prevented claimant from timely filing a request for hearing on the WPBR, and whether factors or circumstances beyond claimant's reasonable control or an excusable mistake delayed filing. If good cause is found to extend the filing deadline, further inquiry should be made to determine whether claimant's request for hearing was filed within a "reasonable time" after the factors that prevented timely filing ended.

If the request for hearing was intended to appeal a different administrative decision, the ALJ should determine whether the February 20, 2024, request identified that decision sufficiently to allow consideration of it in this appeal. If so, similar inquiry should be made to determine whether the request was timely or if good cause exists to allow late filing as to that administrative decision. If the request for hearing was not intended to appeal a specific administrative decision but only to request payment of additional regular UI benefits based on need, inquiry should be made as to whether the request presents a justiciable controversy.

¹ It should be noted that in the past, other benefit programs may have been available to claimants who exhausted regular UI benefits, such as during the COVID-19 pandemic. However, no such programs are currently in effect and are not applicable to this claim.

For these reasons, Order No. 24-UI-249329 is set aside and the matter remanded for a hearing to determine whether claimant's late request for hearing should be allowed and, if so, the merits of the WPBR or other administrative decision that claimant intended to appeal.

DECISION: Order No. 24-UI-249329 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: May 1, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-249329 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 desisyong ito.

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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