

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0303

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On December 29, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective November 1, 2020 (decision # 155340). On January 18, 2022, decision # 155340 became final without claimant having filed a request for hearing. On June 30, 2022, the Department served notice of an administrative decision, based in part on decision # 155340, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$2,373 overpayment of regular unemployment insurance (regular UI) benefits and a \$4,500 overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department, a \$1,374.60 monetary penalty, and a 47-week penalty disqualification from future benefits (decision # 193319). On July 20, 2022, decision # 193319 became final without claimant having filed a request for hearing. On February 27, 2024, claimant filed late requests for hearing on decisions # 155340 and 193319.

ALJ Kangas considered claimant's late request for hearing on decision # 193319, and on February 28, 2024, issued Order No. 24-UI-249049, dismissing claimant's request for hearing on decision # 193319 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 13, 2024. ALJ Kangas also considered claimant's late request for hearing on decision # 155340, and on February 29, 2024, issued Order No. 24-UI-249174, dismissing claimant's request for hearing on decision # 155340 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 14, 2024. On March 8, 2024, claimant filed a timely response to the appellant questionnaire and timely applications for review of Orders No. 24-UI-249174 and 24-UI-249049 with the Employment Appeals Board (EAB), the receipt of which by EAB was delayed until March 25, 2024, due to insufficient postage. This matter comes before EAB based upon claimant's March 8, 2024, applications for review of Orders No. 24-UI-249174 and 24-UI-249049.

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, 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.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-249174 and 24-UI-249049. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0303 and 2024-EAB-0302).

CONCLUSIONS AND REASONS: Orders No. 24-UI-249174 and 24-UI-249049 are set aside and these matters remanded for a hearing on whether claimant’s late requests for hearing on decisions # 155340 and 193319 should be allowed and, if so, the merits of those decisions.

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 request for hearing on decision # 155340 was January 18, 2022. Because claimant did not file their request for hearing on decision # 155340 until February 27, 2024, the request for hearing was late. The deadline to file a request for hearing on decision # 193319 was July 20, 2022. Because claimant did not file their request for hearing on decision # 193319 until February 27, 2024, the request for hearing was late.

In claimant’s hearing request referral, claimant wrote, “Did not receive the decision[.]” Exhibit 2 at 2. Similarly, in claimant’s appellant questionnaire response, claimant stated that decisions # 155340 and 193319 were mailed to them on February 28, 2024, and the decisions “showed up” on March 8, 2024. EAB Exhibit 1 at 1. Claimant further stated that the hearing requests were filed by “an agent” after claimant called the “admin office.” EAB Exhibit 1 at 1. In response to the question: “If you did not file your hearing request (appeal) before the deadline stated in the administrative decision, why didn’t you?” claimant stated, “I didn’t receive the decision, so I could not appeal.” EAB Exhibit 1 at 2.

The information submitted by claimant suggests that claimant did not receive decisions # 155340 and 193319 in the regular course of the mail after they were issued in December 2021 and late June 2022, respectively. If claimant did not receive the decisions, this may establish good cause for their late requests for hearing. On remand, the ALJ should ask questions to determine precisely when claimant received decisions # 155340 and 193319, and if they were not received until March 8, 2024, when claimant first became aware of the decisions along with their right to appeal the decisions. Claimant’s appellant questionnaire response suggests something motivated claimant to contact the “admin office” on February 27, 2024, which resulted in an “agent” assisting claimant in requesting hearings on decisions # 155340 and 193319. On remand, the ALJ should inquire about this conversation and ask claimant what prompted them to contact the admin office when they did. To the extent the record on remand establishes good cause for claimant’s late requests for hearing, the ALJ should ask questions to develop whether claimant filed their late requests within a seven-day reasonable time after the factors that prevented timely filing ceased.

Orders No. 24-UI-249174 and 24-UI-249049 therefore are reversed, and these matters remanded for hearings on whether claimant's late requests for hearing should be allowed and, if so, the merits of decisions # 155340 and 193319.

DECISION: Orders No. 24-UI-249174 and 24-UI-249049 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: May 7, 2024

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 24-UI-249174 and 24-UI-249049 or return these matters to EAB. Only a timely application for review of the relevant subsequent order will cause either of these matters 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 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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