

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0315

Reversed and Remanded

PROCEDURAL HISTORY: On October 25, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, not for misconduct, within 15 days of a planned voluntary leaving for reasons that did not constitute good cause, and was therefore disqualified from receiving unemployment insurance benefits effective August 20, 2023 (decision # 84353). On November 14, 2023, decision # 84353 became final without claimant having filed a request for hearing. On February 21, 2024, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on February 28, 2024 issued Order No. 24-UI-249008, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 13, 2024. On March 18, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).¹ On March 26, 2024, claimant filed a late response to the appellant questionnaire with 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, admitted as necessary to complete the record. It 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 # 84353, mailed on October 25, 2023 to claimant's mailing address of record on file with the Department, 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 November 14, 2023." Exhibit 1 at 3. Claimant's request for hearing on decision # 84353 was filed February 21, 2024. Exhibit 2 at 2.

¹ Though filed online as a request for hearing, claimant's March 18, 2024 filing expressed disagreement with the effects of decision # 84353 on their claim for benefits and was therefore construed as an application for review of Order No. 24-UI-249008.

CONCLUSIONS AND REASONS: Order No. 24-UI-249008 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 decision # 84353.

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 request for hearing on decision # 84353 was due by November 14, 2023. Claimant filed their request for hearing on February 21, 2024, and therefore the request was late.² The record suggests that claimant may have good cause to extend the timely filing deadline.

Claimant wrote in their appellant questionnaire response that they received decision # 84353 on February 21, 2024. EAB Exhibit 1 at 1. If claimant did not receive decision # 84353 prior to the November 14, 2023 filing deadline, this may have been a factor beyond claimant’s reasonable control that prevented timely filing. On remand, inquiry should be made to confirm whether claimant received decision # 84353 on February 21, 2024 or an earlier date and, if it was not received on or before November 14, 2023, the record should be developed as to whether a factor or circumstance beyond claimant’s reasonable control delayed receipt of that decision, or otherwise prevented timely filing of the request for hearing. Inquiry should also be made into whether and when claimant learned of decision # 84353 and his appeal rights from that decision by other means if receipt was delayed, as well as into what prompted claimant to file the late request for hearing on February 21, 2024 if it was not the receipt of decision # 84353 that day.

Further, if good cause is found to extend the deadline for timely filing, additional inquiry should be made into when the factors or circumstances that prevented timely filing ceased, and whether claimant’s late request for hearing was filed within a “reasonable time” after those factors or circumstances ceased.

For these reasons, Order No. 24-UI-249008 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 decision # 84353.

DECISION: Order No. 24-UI-249008 is set aside and the matter remanded for further proceedings consistent with this order.

D. Hettle and A. Steger-Bentz;

² The phrasing of claimant’s late request for hearing suggests that claimant disagrees with the Department’s implicit conclusion that they had insufficient earnings (at least \$3,012—four times their weekly benefit amount of \$753) from work performed *after* their separation from Washington Federal Savings to end the disqualification imposed by decision # 84353. *See* Exhibit 2 at 2. The Department’s records suggest that claimant may have earned at least this amount in the fourth quarter of 2023. Claimant may therefore wish to provide the Department with documentation of all wages earned after August 20, 2023 to assist the Department in determining when, if at all, the disqualification should have ended.

S. Serres, not participating.

DATE of Service: May 8, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-249008 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.

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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