

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0348

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On January 5, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed a late claim for unemployment insurance benefits for the week of November 26 through December 2, 2023 (week 48-23) and was ineligible for benefits for that week (decision # 152801). Also on January 5, 2024, the Department served notice of an administrative decision concluding that claimant did not actively seek work during week 48-23 and was ineligible for benefits for that week (decision # 95726). Also on January 5, 2024, the Department served notice of an administrative decision concluding that claimant filed a late claim for benefits for the week of December 10 through 16, 2023 (week 50-23) and was ineligible for benefits for that week (decision # 154708). Also on January 5, 2024, the Department served notice of an administrative decision concluding that claimant did not actively seek work during week 50-23 and was ineligible for benefits for that week (decision # 101220). On January 25, 2024, decisions # 152801, 95726, 154708, and 101220 became final without claimant having filed requests for hearing.

On February 15, 2024, claimant filed late requests for hearing on decisions # 152801, 95726, 154708, and 101220. ALJ Kangas considered claimant's requests, and on February 26, 2024, issued Orders No. 24-UI-248867, 24-UI-248870, 24-UI-248861, and 24-UI-248865, dismissing the requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by March 11, 2024. On March 14, 2024, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 24-UI-248867, 24-UI-248870, 24-UI-248861, and 24-UI-248865 with the Employment Appeals Board (EAB). On March 28, 2024, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue additional orders regarding these matters because the questionnaire response was late. These matters come before EAB based upon claimant's March 14, 2024, applications for review of Orders No. 24-UI-248867, 24-UI-248870, 24-UI-248861, and 24-UI-248865.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-248867, 24-UI-248870, 24-UI-248861, and 24-UI-248865. For case-tracking purposes, this decision is being issued in quadruplicate (EAB Decisions 2024-EAB-0309, 2024-EAB-0348, 2024-EAB-0308, and 2024-EAB-0310).

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 cover letter included with same, 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.

CONCLUSIONS AND REASONS: Orders No. 24-UI-248867, 24-UI-248870, 24-UI-248861, and 24-UI-248865 are set aside and these matters remanded for a hearing on whether claimant’s late requests for hearing on decisions # 152801, 95726, 154708, and 101220 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 requests for hearing on decisions # 152801, 95726, 154708, and 101220 was January 25, 2024. Because claimant did not file their requests for hearing on those decisions until February 15, 2024, the requests for hearing were late.

In claimant’s appellant questionnaire response, claimant explained that they did not file their hearing requests before the deadline because “I was told to wait for review.” EAB Exhibit 1 at 3. In their cover letter, claimant also stated that on an unspecified date, claimant called the Department and spoke to a representative, who “spoke with a supervisor and advised that I resubmit the form stating that I had searched for work. This would trigger a review and then possibly benefits. So I did.” EAB Exhibit 1 at 1. This information suggests that after claimant received decisions # 152801, 95726, 154708, and 101220, a Department representative may have told claimant to resubmit their applicable weekly claim forms and wait for further information following a review. If this is so, claimant may have had good cause for failing to appeal the administrative decisions by the January 25, 2024, deadline because their failure to do so may have been due to an excusable mistake or factors beyond their reasonable control.

On remand, the ALJ should inquire when claimant received decisions # 152801, 95726, 154708, and 101220. The ALJ should also ask when claimant spoke with the representative who told them to resubmit their weekly claim forms, and what precisely the representative said to claimant at that time, including whether the representative told claimant to wait for further information following a review. The ALJ should ask claimant to elaborate upon what prompted claimant to file their hearing requests on February 15, 2024. Claimant stated in their appellant questionnaire response that they filed that day because “I finally was able to talk to someone. Still no clear answers, but a path forward.” EAB Exhibit 1 at 3. The ALJ should inquire when the conversation in which claimant gained an understanding of a path forward occurred, and what claimant was told that prompted claimant to file their hearing requests when they did. The ALJ also should ask further questions to develop whether claimant’s February 15,

2024, late requests for hearing were filed within a seven-day reasonable time of when any factors that prevented timely filing ceased to exist.

Orders No. 24-UI-248867, 24-UI-248870, 24-UI-248861, and 24-UI-248865 therefore are reversed, and these matters remanded for a hearing on whether claimant's late requests for hearing should be allowed and, if so, the merits of decisions # 152801, 95726, 154708, and 101220.

DECISION: Orders No. 24-UI-248867, 24-UI-248870, 24-UI-248861, and 24-UI-248865 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: April 19, 2024

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 24-UI-248867, 24-UI-248870, 24-UI-248861, or 24-UI-248865 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause 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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