

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0376

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On December 11, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was denied benefits beginning December 11, 2023 because he quit working for Naito Corporation without good cause (decision # 144104).¹ On December 27, 2023, the Department served notice of an administrative decision based in part on decision # 144104, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, assessing a \$1,807 overpayment that claimant had to repay, a \$542.10 monetary penalty, and a 14 week penalty disqualification from future benefits (decision # 200715). On January 2, 2024, decision # 144104 became final without claimant having filed a request for hearing. On January 16, 2024, decision # 200715 became final without claimant having filed a request for hearing.

On January 23, 2024, claimant filed late requests for hearing on decisions # 144104 and 200715. ALJ Scott considered claimant's requests, and on January 31, 2024, issued Orders No. 24-UI-246983 and 24-UI-246982, dismissing the requests as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 14, 2024. On February 5, 2024, claimant filed a timely response to the appellant questionnaire attached to Order No. 24-UI-246982, which the Office of Administrative Hearings (OAH) construed as applying to claimant's late request for hearing on decision # 200715, but not claimant's late request for hearing on decision # 144104. On February 26, 2024, the

¹ EAB has taken notice of the facts regarding decision # 144104, which are 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.

OAH mailed the parties a letter stating that Order No. 24-UI-246982 was vacated and that a hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of decision # 200715.²

On April 2, 2024, ALJ Goodrich conducted a hearing at which neither employer appeared, and on April 10, 2024, issued Order No. 24-UI-251880, dismissing claimant's request for hearing as late without good cause, leaving decision # 200715 undisturbed. On April 17, 2024, claimant filed an application for review of Order No. 24-UI-251880 with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. EAB agrees with Order No. 24-UI-251880's findings of fact, reasoning, and dismissal of claimant's late request for hearing on decision # 200715. Pursuant to ORS 657.275(2), Order No. 24-UI-251880 is **adopted**.

DECISION: Order No. 24-UI-251880 is affirmed.

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

DATE of Service: May 15, 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.

NOTE: If the December 11, 2023, administrative decision (decision # 144104) is later modified or reversed, any other administrative decision that was issued based on the conclusions of decision # 144104, such as the assessment of overpayment at issue in this decision, any other overpayment decision based on decision # 144104, or denial of an overpayment waiver, may be affected, even if such decisions are under appeal or would otherwise be considered final. The Department should therefore consider whether attempts to recover such an overpayment while the overpayment's validity is subject to direct or indirect appellate review would violate claimant's right to due process or statutory provisions. *See, e.g.*, ORS 657.310(3); ORS 657.315(2).

² It is unclear why OAH did not construe claimant's response to the appellant questionnaire as also applying to claimant's late request for hearing on decision # 144104, and consolidate the matters for hearing. Decision # 144104 and decision # 200715 were issued close in time, and claimant filed his requests for hearing on both decisions at the same time. The direct review dismissal orders were both issued on January 31, 2024, and claimant's appellate questionnaire response appears to address his late requests for hearing on both decisions # 144104 and 200715.

Claimant may wish to follow up with OAH. If OAH determines that the appellant questionnaire response constituted a timely response with respect to claimant's late request for hearing on decision # 144104, OAH should proceed to determine whether the late request for hearing should be allowed, including whether decision # 144104 provided claimant adequate due process notice in light of the two-notice system used in the case and recent Court rulings on the matter.

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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 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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