

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0403

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On July 13, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective December 20, 2020 (decision # 81502). On August 2, 2021, decision # 81502 became final without claimant having filed a request for hearing. On June 28, 2022, the Department served notice of an administrative decision, based in part on decision # 81502, concluding that claimant received benefits to which they were not entitled and assessing an overpayment of \$3,299 in regular unemployment insurance (regular UI) benefits, \$6,600 in Federal Pandemic Unemployment Compensation (FPUC) benefits, and \$6,645 in Pandemic Emergency Unemployment Compensation (PEUC) benefits that claimant was required to repay to the Department (decision # 174702). On July 18, 2022, decision # 174702 became final without claimant having filed a request for hearing. On May 17, 2023, claimant filed late requests for hearing on decisions # 81502 and 174702.

ALJ Kangas of the Office of Administrative Hearings considered claimant's requests, and on October 24, 2023, issued Orders No. 23-UI-239367 and 23-UI-239365, dismissing claimant's requests for hearing on decisions # 81502 and 174702, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by November 7, 2023. On November 9, 2023, claimant filed a late appellant questionnaire response and timely applications for review of Orders No. 23-UI-239367 and 23-UI-239365 with the Employment Appeals Board (EAB). On November 20, 2023, and April 29, 2024, ALJ Kangas mailed letters stating that because the appellant questionnaire response was late, it would not be considered and additional orders would not be issued regarding the matters. These matters come before EAB based upon claimant's November 9, 2023, applications for review of Orders No. 23-UI-239367 and 23-UI-239365.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-239367 and 23-UI-239365. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0404 and 2024-EAB-0403).

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: Decision # 81502, mailed on July 13, 2021, to claimant’s 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 August 2, 2021.” Order No. 23-UI-239367, Exhibit 1 at 2.

(2) Decision # 174702, mailed on June 28, 2022, to claimant’s address of record on file with the Department, stated, “[Y]ou have the right to appeal this decision. Any appeal from this decision must be filed on or before July 18, 2022, to be timely.” Order No. 23-UI-239365, Exhibit 1 at 3.

(3) Claimant was working out of state from May 6, 2022, until October 14, 2022, and therefore did not receive decision # 174702 until after they returned home on October 14, 2022.

(4) On May 17, 2023, claimant telephoned the Department regarding the overpayment and filed requests for hearing on decisions # 81502 and 174702.

CONCLUSIONS AND REASONS: Claimant’s requests for hearing were late without good cause.

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 requests for hearing on decisions # 81502 and 174702 were due by August 2, 2021, and July 18, 2022, respectively. Because claimant filed both requests for hearing on May 17, 2023, the requests were late.

Claimant did not provide information in their appellant questionnaire response as to why their request for hearing on decision # 81502 was late, and therefore claimant has not shown good cause to extend the deadline for timely filing a request for hearing on that decision.

Claimant wrote in their appellant questionnaire response that they were temporarily out of state for work when decision # 174702 was mailed and did not receive it or know about the overpayment at issue until after they returned home on October 14, 2022. EAB Exhibit 1 at 2. Claimant’s temporary absence from home when decision # 174702 was mailed was a circumstance beyond claimant’s reasonable control that prevented timely filing of the request for hearing on that decision, and the deadline for filing that request

is therefore extended. However, this circumstance ceased in October 2022 when claimant returned home and had the opportunity to read decision # 174702 and their appeal rights regarding that decision.

Claimant did not file a request for hearing on decision # 174702 until May 17, 2023, and the record does not show what other factors or circumstances, if any, delayed filing between October 2022 and May 17, 2023. Therefore, claimant has not shown that the late request for hearing on decision # 174702 was filed within a seven-day “reasonable time” after the factor that prevented timely filing ceased. Accordingly, good cause to allow the late requests for hearing on decisions # 81502 and 174702 has not been shown, and the requests are dismissed.

DECISION: Orders No. 23-UI-239367 and 23-UI-239365 are affirmed.

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

DATE of Service: May 7, 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.

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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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