

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0459

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On June 4, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work for the weeks of May 24, 2020 through June 5, 2021 (weeks 22-20 through 22-21) and was therefore ineligible to receive unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 150424). On June 24, 2021, decision # 150424 became final without claimant having filed a request for hearing. On November 15, 2022, claimant filed a late request for hearing on decision # 150424. ALJ Kangas considered claimant's request, and on March 16, 2023 issued Order No. 23-UI-219274, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 30, 2023. On or around March 28, 2023, claimant filed a timely response to the appellant questionnaire. On September 11, 2023, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 23-UI-219274 was vacated and that a hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # 150424. On May 10, 2024, ALJ Lucas conducted a hearing at which the Department failed to appear, and on May 14, 2024 issued Order No. 24-UI-254161, re-dismissing claimant's late request for hearing on decision # 150424 and leaving that decision undisturbed. On May 25, 2024, claimant filed an application for review of Order No. 24-UI-254161 with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of a September 28, 2022 administrative decision, # 153412, assessing an overpayment that claimant was required to repay to the Department and email correspondence from the claimant dated November 15, 2022. EAB has taken notice of this evidence, which is contained within Employment Department records. OAR 471-041-0090(1). This evidence 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: (1) On June 4, 2021, the Department mailed decision # 150424 to claimant’s address on file with the Department. Decision # 150424 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 June 24, 2021.” Exhibit 1 at 2. Decision # 150424 also stated, “**IMPORTANT:** If you were paid benefits for any week covered by this decision, you may have to pay us back. You’ll get information about how much you owe and how to pay us back, after the appeal period.” Exhibit 1 at 2 (emphasis in original).

(2) Claimant received decision # 150424 in June 2021. Although claimant disagreed with the outcome of the decision, she decided not to dispute the decision.

(3) On September 28, 2022, the Department served notice of an administrative decision, based in part on decision # 150424, concluding that claimant received benefits to which she was not entitled and assessing an overpayment of \$751 in combined state and federal benefits that claimant was required to repay to the Department (decision # 153412).

(4) On November 14, 2022, claimant received decision # 153412.¹ The following day, claimant contacted the Department with concerns about the overpayment and, after speaking to a representative, filed requests for hearing on decisions # 150424 and 153412.

CONCLUSIONS AND REASONS: Order No. 24-UI-254161 is reversed and this matter remanded for a hearing on the merits of decision # 150424.

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 # 150424 was due by June 24, 2021. Because claimant did not file her request until November 15, 2022, the request was late. The order under review concluded that claimant did not have good cause for filing the late request for hearing because the delay in filing was not the result of an excusable mistake or factors beyond claimant’s reasonable control. Order No. 24-UI-254161 at 3. The record does not support this conclusion. Instead, the record shows that the language in decision # 150424 was insufficient to satisfy due process requirements under the 14th Amendment to the United States Constitution because it failed to provide adequate notice of the decision’s implications on claimant’s right to benefits.²

¹ Throughout the record, claimant indicated in her written evidence and testimony that she received the overpayment decision, and filed her request for hearing, in November 2023, rather than November 2022. *See, e.g.*, Exhibit 3 at 2–3. However, the record shows that claimant filed her request for hearing on November 15, 2022, and not a year later. *See, e.g.*, Exhibit 2 at 1. The facts in this decision have been found accordingly.

² U.S. Const. amend. XIV, §1 provides, in relevant part, “[N]or shall any State deprive any person of life, liberty, or property, without due process of law[.]”

While decision # 150424 notified claimant that she was ineligible for benefits for a series of weeks for which she had already claimed benefits, it did not identify the amount (or approximation) of the overpayment that could result from its determination of ineligibility. In order for claimant to have meaningfully understood the implications of decision # 150424, due process required the Department to inform claimant of those implications resulting from the retroactive change in her benefit entitlement *during the period in which claimant could have timely requested a hearing on that administrative decision*. In other words, because the Department did not notify claimant of the amount, or approximation thereof, of the overpayment that might result from decision # 150424's denial of benefits, claimant was unable to make an informed decision as to "whether to spend the time and resources challenging the decision." See *Casillas v. Gerstenfeld*, No. 22CV18836 (Mult. Co. Cir. Ct. Apr. 5, 2024) Letter Opinion on Cross Motions for Summary Judgment at 10-11; See also generally *Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306 (1950). This failure to provide claimant with due process constituted a factor beyond her reasonable control, and claimant therefore had good cause for filing the late request for hearing.

Further, claimant filed the late request for hearing within a reasonable time of when the factors which prevented the timely filing ceased. Claimant received the overpayment decision on November 14, 2022. The factor which prevented her from filing a timely request for hearing ceased at that point. As claimant filed her request for hearing the following day, she did so within a reasonable time after the factor which prevented her timely filing ceased. Therefore, claimant's late request for hearing on decision # 150424 is allowed, and claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 24-UI-254161 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: July 2, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-254161 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 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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