

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0489

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On March 2, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$11,667 in combined state and federal benefits that claimant was required to repay, a \$3,500.10 monetary penalty, and a 52-week penalty disqualification from future benefits (decision # 193440). On March 22, 2023, decision # 193440 became final without claimant having filed a request for hearing. On February 26, 2024, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on February 29, 2024, issued Order No. 24-UI-249147, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 20, 2024. On March 4, 2024, claimant filed a timely response to the appellant questionnaire. On April 2, 2024, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 24-UI-249147 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 # 193440. On May 14, 2024, ALJ Frank conducted the hearing, and on May 22, 2024, issued Order No. 24-UI-254835, dismissing claimant's late request for hearing and leaving decision # 193440 undisturbed. On June 4, 2024, claimant filed an application for review of Order No. 24-UI-254835 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant filed written arguments on June 4 and June 24, 2024. EAB did not consider claimant's June 4, 2024, argument when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Additionally, both arguments contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing.

Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's June 24, 2024, argument to the extent it was based on the hearing record.

The parties may offer new information, such as the new information contained within claimant's written arguments, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties before the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) Claimant claimed benefits from approximately April 2020 through January 2021, and again briefly in May 2021.¹ Claimant stopped claiming benefits after May 2021.

(2) In early January 2021, claimant moved from an address in Merrill, Oregon to an address in Klamath Falls, Oregon. In December 2021, claimant moved to a different address in Klamath Falls, where she still resides. After each of these moves, claimant updated her address with the United States Postal Service. However, claimant did not update her address with the Department at the time of either of those moves.

(3) On March 2, 2023, the Department mailed decision # 193440 to claimant's address on file with the Department. Decision # 193440 stated, "To be timely, any appeal from this decision must be filed on or before MARCH 22, 2023." Exhibit 1 at 1 (emphasis in original). Claimant's address on file with the Department at the time was her prior address in Merrill, and decision # 193440 was mailed to that address.

(4) Because decision # 193440 was mailed to claimant's previous address, she did not receive it and was not aware of its existence. In April and May 2023, the Department mailed billing statements regarding the overpayment assessed in decision # 193440 to the address in Merrill. Claimant did not receive these statements.

(5) On February 16, 2024, claimant received a writ of garnishment relating to the unpaid overpayment balance. On February 26, 2024, claimant contacted the Department, learned of the existence of decision # 193440, and filed a request for hearing on that decision.

CONCLUSIONS AND REASONS: Order No. 24-UI-254835 is reversed and this matter remanded for a hearing on the merits of decision # 193440.

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

¹ There is some conflict in the record as to whether claimant continued to claim benefits after January 2021. However, the outcome of this decision remains the same regardless of whether claimant stopped claiming benefits in January 2021 or May 2021. For purposes of determining whether claimant's late request for hearing should be allowed, it is assumed that claimant stopped claiming benefits in May 2021, as this is supported by the Department's records. *See* Exhibit 1 at 3. However, the question of whether claimant continued to claim benefits after January 2021 may require further inquiry at the hearing on remand, as a finding on that point may affect the amount of overpayment, if any.

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. Under OAR 471-040-0010(1)(b)(A), “good cause” does not include failure to receive a document due to not notifying the Department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal.

The request for hearing on decision # 193440 was due by March 22, 2023. Because claimant did not file her request until February 26, 2024, the request was late.

Claimant failed to file a timely request for hearing on decision # 193440 because she never received the decision. This was the result of claimant having failed to update her address with the Department prior to the issuance of decision # 193440. The order under review concluded that claimant did not have good cause to file the late request for hearing because her circumstances were not considered good cause under OAR 471-040-0010(1)(b)(A). Order No. 24-UI-254835 at 3. The record does not support this conclusion.

Although claimant failed to update her address in January 2021, claimant moved again in December 2021. The administrative decision at issue was not mailed to claimant until March 2, 2023, almost two years after claimant stopped claiming benefits in May 2021. As a result, OAR 471-040-0010(1)(b)(A) does not apply to claimant’s failure to update her address with the Department when she moved in December 2021. Instead, the record shows that claimant’s failure to update her address with the Department prior to the issuance of decision # 193440 was an excusable mistake. At the time claimant moved to her second address in Klamath Falls, she had not claimed benefits for approximately seven months. Claimant would not have known to update her address with the Department at that time because she would not have had reason to expect any communications from the Department. As such, her failure to update her address after the December 2021 move, resulting in her failure to receive decision # 193440, was an excusable mistake, which constitutes good cause to extend the request for hearing filing deadline.

Claimant learned of the existence of decision # 193440 on February 26, 2024, after she contacted the Department about the writ of garnishment she had recently received. The factors which prevented claimant’s timely filing therefore ceased on that date. As claimant filed her request for hearing on the same date, she did so within a reasonable time after the factors that prevented a timely filing ceased.

For the above reasons, claimant had good cause for failing to file a timely request for hearing, and filed her late request for hearing within a reasonable time. Claimant’s late request for hearing therefore is allowed, and claimant is entitled to a hearing on the merits of decision # 193440.

DECISION: Order No. 24-UI-254835 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: June 28, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-254835 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

NOTE: If decision # 193440 is modified or reversed on remand or subsequent appeals, any other administrative decision that was issued based on the conclusions of decision # 193440, such as an assessment of overpayment 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).

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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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