

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0508

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On February 16, 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 a \$3,303 overpayment that claimant was required to repay, a \$990.90 monetary penalty, and a 21-week penalty disqualification from future benefits (decision # 193560). On March 8, 2023, decision # 193560 became final without claimant having filed a request for hearing. On January 23, 2024, claimant filed a late request for hearing. On May 21, 2024, ALJ Chiller conducted a hearing, and on May 29, 2024, issued Order No. 24-UI-255264, dismissing claimant’s request for hearing as late without good cause and leaving decision # 193560 undisturbed. On June 17, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) In late January and early February 2023, claimant’s brother and grandmother died within days of one another, which caused claimant to become severely depressed. Although claimant received counseling and took medication for the depression, she “was in complete dysfunction” and was so distraught that she felt as though she “disappeared out of [her] body for a year.” Transcript at 13, 22.

(2) At the time of the deaths of claimant’s brother and grandmother, claimant resided in a house on 27th Avenue in Albany, Oregon. Claimant’s grandmother owned the house and rented it to claimant. On or about February 7, 2023, shortly after claimant’s grandmother died, claimant’s uncle served claimant with a notice seeking to evict claimant from the house. Claimant remained in the house pending the outcome of the eviction proceeding. However, claimant’s uncle informed the U.S. Postal Service that the house was abandoned property, which disrupted delivery of claimant’s mail and ultimately caused most of claimant’s mail to not be delivered.

(3) On February 16, 2023, the Department mailed decision # 193560 to claimant’s address of record, which was the 27th Avenue address. Decision # 193560 assessed an overpayment that claimant was liable to repay the Department, along with penalties. Decision # 193560 stated, “To be timely, any

appeal from this decision must be filed on or before March 8, 2023.” Exhibit 2 at 1. On March 2, 2023, the Department mailed decision # 193435 to claimant’s address of record. Decision # 193435 amended a clerical error in decision # 193560 and, like # 193560, assessed an overpayment that claimant was liable to repay the Department, along with penalties. Decision # 193435 stated, “To be timely, any appeal from this decision must be filed on or before March 22, 2023. Exhibit 3 at 1.

(4) Claimant did not receive decisions # 193560 and 193435.

(5) Beginning in April 2023, and continuing each month through December 2023, the Department mailed billing statements to the 27th Avenue address seeking repayment of the overpayment reflected in decisions # 193560 and 193560. Claimant saw a couple of these billing statements between April 2023 through December 2023.

(6) Claimant became aware that most of her mail was not being delivered to the 27th Avenue address and, in September 2023, claimant requested the U.S. Postal service transfer her mail to her mother’s address. However, claimant was required to arrange with her brother to retrieve the mail transferred to her mother’s address. Claimant’s brother often conveyed the mail to claimant by leaving a bundle of mail under the windshield wipers of claimant’s car. The arrangement led to claimant frequently losing or not receiving mail transferred to her mother’s address.

(7) In October 2023, the eviction proceeding concluded and claimant was removed from the house on 27th Avenue. Thereafter, claimant was homeless and lived in her car.

(8) In December 2023, claimant got a stack of mail that had been transferred to her mother’s address. Claimant went through the mail. In doing so, claimant saw “a payment schedule thing” from the Department that alleged claimant had been overpaid benefits based on unreported earnings and showed the differences in the amount of earnings she had reported compared to the amount of her earnings reported by her employer. Transcript at 27.

(9) Claimant went to her local WorkSource office and inquired about the overpayment. A Department representative told claimant that she could “file a form to ask for forgiveness of the overpayment.” Transcript at 23. Based on this discussion, claimant went to the public library and filled out a request for a waiver of recovery of the overpayment. Claimant filed the waiver request online on December 20, 2023. The Department processed the waiver request on December 21, 2023.

(10) On January 2, 2024, the Department denied claimant’s overpayment waiver request. On January 23, 2024, claimant “made a call” to the Department and was informed that the waiver request she had filed corresponded to her overpayment of federal benefits, and that she could also file an overpayment waiver request corresponding to her overpayment of state benefits. Transcript at 21. In the call, the representative also advised claimant of her ability to file a late request for hearing on decision # 193560. Transcript at 32.

(11) On January 23, 2024, claimant filed a late request for hearing on decision # 193560 using the Department’s online webform. Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Order No. 24-UI-255264 is reversed, claimant’s late request for hearing is allowed, and a hearing on the merits of decision # 193560 is required.

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 a request for hearing on decision # 193560 was March 8, 2023. Because claimant did not file her request for hearing until January 23, 2024, the request for hearing was late.

The order under review dismissed claimant’s late request for hearing because, although it concluded claimant established good cause to extend the deadline to file an appeal to December 21, 2023, it concluded claimant failed to file her hearing request within a reasonable time because she filed it on January 23, 2024, more than seven days after December 21, 2023. Order No. 24-UI-255264 at 4. The record does not support that conclusion.

As an initial matter, some of the order’s findings lack evidentiary support. For example, the order found that when claimant went to her local WorkSource office and inquired about the overpayment, the representative told her she could make a late request for hearing *or* file a waiver of the overpayment amount. Order No. 24-UI-255264 at 2, ¶ 9. However, the testimony offered at hearing on this point was often indefinite and not sufficient to find that the representative mentioned any option besides filing a waiver request.

Claimant initially testified, “[A] gal in there said, well, you can request for an appeal or a waiver or something.” Audio Record at 57:08. Claimant then testified, “[T]hey advised me that I could try to request, um, whether it’s a hearing or a – whatever it is. I don’t know the technical terms you guys are using. But I – I sent something, um, when I was informed that I could apply for, um, deferral of the payments, the overpayments or whatever the heck they’re stating that I did.” Transcript at 21. Later, the ALJ asked, “[Y]ou said that they said something about an appeal or a waiver. Do you remember anything specific, uh, that they – they, um, told you that you could do with regard to the overpayment?” to which claimant made no mention of being told about the right to request a hearing and replied, “To, um, file a form to ask for, uh, uh, to file a form to ask for forgiveness or something of the overpayment.” Transcript at 23. When later asked what information she was given in the WorkSource office, claimant testified, “[T]hey said ‘file a whatever, the waiver,’ or whatever it is. I don’t know.” Transcript at 25.

The foregoing evidence is not sufficient to conclude that the representative told claimant she could make a late request for hearing. However, it is sufficient to conclude that the representative told claimant she could file an overpayment waiver request. The facts of this decision have been found accordingly.¹

¹ Similarly, the order found that claimant “understood that an appeal would challenge the conclusion that she misrepresented her earnings to the Department and was overpaid benefits and that a waiver would forgive the overpayment amounts.” Order No. 24-UI-255264 at 2, ¶ 9. This finding appears to be based on claimant’s testimony in which she stated, “[T]he appeal is obviously fighting what they’re stating that I’ve done and the waiver was to diminish the fact that I even owed. Is that correct what I’m saying?” Transcript at 27-28. However, given that claimant concluded the above testimony with a question seeking

Claimant established good cause to extend the deadline to file a request for hearing on decision # 193560 and filed her request for hearing within a reasonable time. The record shows that as of late January and early February 2023, claimant suffered from severe depression that placed her in a state of “complete dysfunction” and caused her to be so distraught that she felt as though she “disappeared out of [her] body for a year.” Transcript at 13, 22. Furthermore, beginning on or around early February 2023, claimant’s uncle informed the U.S. Postal Service that the house claimant was living in was abandoned property, which ultimately caused most of claimant’s mail to not be delivered. The severe emotional distress and mail disruptions claimant experienced beginning late January 2023 were circumstances beyond her reasonable control.

The Department issued decision # 193560 and its amendment, decision # 193435, in mid-February and early March 2023, respectively, and mailed them to claimant’s address of record, the house on 27th Avenue in Albany. Although claimant was still in possession of the house at the time, the Department mailed the decisions after claimant began experiencing severe emotional distress and mail disruptions. Claimant did not receive either decision # 193560 or decision # 193435, and the record shows that claimant’s non-receipt of the decisions were due to the mail disruptions she was experiencing or her severe emotional distress. Thus, circumstances beyond claimant’s reasonable control caused her to fail to receive decision # 193560, and in turn also caused her to be unaware of the existence of the administrative decision and her right to request a hearing on the decision.

These circumstances continued through 2023. The Department sent billing statements to the 27th Avenue address seeking repayment of the overpayment reflected in decision # 193560 between April 2023 and December 2023, and claimant saw a couple of these statements. However, claimant remained in severe emotional distress when she saw the statements, and the record does not show that the statements advised claimant of her right to request a hearing on decision # 193560, such that they would cause claimant to be on notice of her right to appeal the decision, causing the circumstances preventing a timely filing to end.

The circumstances preventing a timely filing persisted throughout December 2023. That month, claimant got a stack of transferred mail from her mother’s address and found a “payment schedule thing” from the Department. Transcript at 27. This document alleged claimant had been overpaid benefits based on unreported earnings and showed the differences in the amount of earnings she had reported compared to the amount of her earnings reported by her employer. The order under review found that the document was the amended decision, decision # 193435. Order No. 24-UI-255264 at 2, ¶ 8. However, it is more likely that the “payment schedule thing” was simply one of the Department’s billing statements since the Department had mailed statements to claimant each month from April through December 2023, but had mailed decision # 193560 and decision # 193435 each only once in mid-February and early March 2023, respectively. As stated above, receipt of a billing statement would not have caused the circumstances preventing a timely filing to cease since the record does not show that the billing statements advised claimant of her right to request a hearing on decision # 193560.²

confirmation from the ALJ, along with the fact that claimant also variously testified, “I don’t know the technical terms you guys are using” and “To the best of my, I – the waiver, the amendment. I don’t know the difference of what it is,” the record does not show that claimant understood the difference between a hearing request and a waiver request. Transcript at 21; Audio Record at 1:05:43.

² Furthermore, even if the document found in the mail stack was a copy of decision # 193560 or decision # 193435, neither would have caused the circumstances beyond claimant’s control to cease. This is so because decision # 193560 stated, “To be

From there, claimant went to her local WorkSource office and inquired about the overpayment. More likely than not, the representative told claimant that she could file a request for waiver of recovery of the overpayment, but did not mention claimant's right to file a late request for hearing on decision # 193560. The circumstances beyond claimant's control preventing her from filing a request for hearing therefore continued. Claimant then filed her overpayment waiver request on December 20, 2023, which the Department denied on January 2, 2024. Nothing about this sequence of events would have caused the circumstances beyond claimant's reasonable control to end, as she still had not been made aware of her right to file a late request for hearing on decision # 193560.

The record shows that claimant "made a call this year [2024]" to the Department and spoke to a representative who advised that the waiver request claimant had filed corresponded to her overpayment of federal benefits, and that she could also file an overpayment waiver request corresponding to her overpayment of state benefits. Transcript at 21. At hearing, claimant testified in reference to this call that, "[W]hen I spoke to somebody over the phone, that's when I was told I sent the wrong request and I was to send a different one." Transcript at 32. More likely than not, this testimony denotes that in addition to urging claimant to file an overpayment waiver request corresponding to her overpayment of state benefits, the representative also advised claimant of her ability to file a late hearing request on decision # 193560. This is so because claimant filed a late request for hearing on decision # 193560 on January 23, 2024, using the Department's online webform, the record does not otherwise explain how or when claimant learned she could file a late request for hearing on decision # 193560, and the record is replete with examples of claimant using the word "request" in her testimony to refer both to requesting an appeal and a waiver. *See* Transcript at 20, 21. The record supports an inference that the call with the Department representative advising claimant of her ability to file a late hearing request on decision # 193560 occurred on January 23, 2024, because that was the date claimant actually filed her late request for hearing, and the Department witness testified at hearing that that was the only date in January 2024 that Department records showed claimant had contacts with the Department. *See* Exhibit 1 at 1; Transcript at 8.

Accordingly, claimant established good cause to extend the deadline to file a request for hearing on decision # 193560 to January 23, 2024, and filed her request on the same day, which was within a reasonable time. Claimant's late request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of decision # 193560.

DECISION: Order No. 24-UI-255264 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 19, 2024

timely, any appeal from this decision must be filed on or before March 8, 2023." Exhibit 2 at 1. Similarly, decision # 193435 stated, "To be timely, any appeal from this decision must be filed on or before March 22, 2023. Exhibit 3 at 1. Nothing from the face of either decision would put someone who received the decision in December 2023 on notice that they had a right to file a late appeal, and have the late appeal allowed if the applicable criteria was met, because both decisions simply listed an appeal deadline that by December 2023 was months in the past.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-255264 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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