

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0589

Reversed & Remanded

PROCEDURAL HISTORY: On February 9, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving benefits effective November 12, 2023 (decision # 83758). On February 29, 2024, decision # 83758 became final without claimant having filed a request for hearing. On April 17, 2024, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on April 30, 2024, issued Order No. 24-UI-253204, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 14, 2024.

On May 20, 2024, Order No. 24-UI-253204 became final without claimant having filed an appellant questionnaire response or an application for review with the Employment Appeals Board (EAB). On July 29, 2024, claimant filed a late appellant questionnaire response. On July 30, 2024, ALJ Kangas issued Order No. 24-UI-260689, finding that claimant had failed to file an appellant questionnaire response by the May 14, 2024, deadline, and re-dismissing claimant's request for hearing as late without a showing of good cause, leaving decision # 83758 undisturbed. On August 13, 2024, claimant filed a timely application for review of Order No. 24-UI-253204 with EAB.

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) On February 9, 2024, the Department mailed decision # 83758 to claimant's address on file with the Department. Decision # 83758 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 February 29, 2024." Exhibit 1 at 2.

(2) Claimant did not receive decision # 83758 after it was mailed in February 2024. Claimant believed their complete mailing address was not printed on the envelope when the Department mailed decision # 83758, resulting in the decision being mis-delivered and claimant not receiving it. Exhibit 3 at 4.

(3) At some point after February 9, 2024, but before April 17, 2024, claimant either learned of the existence of decision # 83758 or of decision # 83758's effect of preventing claimant from receiving benefits. Claimant desired to appeal the decision and went to a WorkSource office to do so "but was told [they] needed a number from a letter [they] didn't receive" to file a request for hearing on the decision. Exhibit 3 at 3.

(4) On February 29, 2024, decision # 83758 became final without claimant having filed a request for hearing.

(5) On April 17, 2024, claimant used the Department's Frances Online website to file a late request for hearing on decision # 83758. Exhibit 3 at 3; Exhibit 2 at 2. ALJ Kangas considered claimant's request, and on April 30, 2024, issued Order No. 24-UI-253204, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 14, 2024.

(6) Claimant's address appeared on the certificate of mailing of Order No. 24-UI-253204 the same as it had on decision # 83758. This resulted in claimant not receiving Order No. 24-UI-253204 with sufficient time to provide the appellant questionnaire response by the May 14, 2024, deadline or the May 20, 2024, date that Order No. 24-UI-253204 became final.

(7) In July 2024, claimant received a copy of decision # 83758 in the mail. Exhibit 3 at 3. On July 29, 2024, claimant filed a late appellant questionnaire response.

CONCLUSIONS AND REASONS: Order No 24-UI-260689 is set aside, and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 83758 should be allowed, and if so, the merits of that decision.

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.

As an initial matter, although claimant failed to file their appellant questionnaire response by the May 14, 2024, deadline or the May 20, 2024, date that Order No. 24-UI-253204 became final, claimant met the elements of OAR 471-041-0090(1)(b) (May 13, 2019) such that EAB has considered the information contained in their appellant questionnaire response. Under OAR 471-041-0090(1)(b), "Any party may request that EAB consider additional evidence, and EAB may allow such a request when the party offering the additional evidence establishes that: (A) The additional evidence is relevant and material to EAB's determination, and (B) Factors or circumstances beyond the party's reasonable control prevented the party from offering the additional evidence into the hearing record."

Here, the information contained in claimant's appellant questionnaire response relates to why claimant's request for hearing on decision # 83758 was late, which is relevant and material to EAB's determination. Furthermore, a factor or circumstance beyond claimant's reasonable control prevented claimant from

offering the appellant questionnaire response by the May 14, 2024, deadline or the May 20, 2024, date that Order No. 24-UI-253204 became final. This is so because claimant's address appeared on the certificate of mailing of Order No. 24-UI-253204 the same as it had on decision # 83758. As the incomplete mailing address on decision # 83758's envelope resulted in the administrative decision being mis-delivered and claimant not receiving it, it is likely that a similar mail delivery problem affected Order No. 24-UI-253204, and resulted in claimant not receiving Order No. 24-UI-253204 with sufficient time to provide the appellant questionnaire response by the May 14, 2024, deadline or the May 20, 2024, date that Order No. 24-UI-253204 became final. Accordingly, both OAR 471-041-0090(1)(b)(A) and (B) are met, and EAB therefore has considered the information contained in claimant's appellant questionnaire response, which the ALJ marked as Exhibit 3. *See* Exhibit 3 at 1-11.

The deadline to file a timely request for hearing on decision # 83758 was February 29, 2024. Because claimant did not request a hearing on decision # 83758 until April 17, 2024, the request for hearing was late.

The information contained in claimant's appellant questionnaire response suggests that claimant did not promptly receive decision # 83758 after it was mailed. Claimant posited that this occurred because their complete mailing address was not printed on the envelope the Department used to mail decision # 837758, which claimant believed caused the administrative decision to be mis-delivered. Exhibit 3 at 4. Claimant's responses further suggest that despite their initial failure to receive decision # 83758 in the mail, at some point after the February 9, 2024, issuance of the administrative decision but before April 17, 2024, claimant either learned of the existence of decision # 83758 or of decision # 83758's effect of preventing claimant from receiving benefits. Claimant desired to appeal decision # 83758 and stated that they "tried coming into the office" to do so, presumably their local WorkSource office, but "was told [they] needed a number from a letter [they] didn't receive" to file a request for hearing on decision # 83758. Exhibit 3 at 3. Ultimately, on April 17, 2024, claimant used the Department's Frances Online website to file a late request for hearing on decision # 83758. Exhibit 3 at 3; Exhibit 2 at 2. Claimant asserted that after this, in July 2024, they received a copy of decision # 83758 by mail.

The information claimant provided suggests there may have been good cause for their late request for hearing. However, remand is necessary to determine whether claimant can show good cause for filing late, and whether the late request for hearing was filed within a reasonable time.

On remand, the ALJ should ask questions to develop why claimant came to believe their complete mailing address was not printed on the envelope used to mail decision # 83758, and inquire whether claimant can provide details as to how the complete address was omitted or obscured or if claimant only asserted that as the reason for why the administrative decision was misdelivered as a matter of speculation. The ALJ should inquire when and how, having initially failed to receive decision # 83758 in the mail, claimant nevertheless became aware of either the existence of decision # 83758 or of decision # 83758's effect of preventing them from receiving benefits.

The ALJ should ask questions to confirm that the "office" referenced by claimant was their local WorkSource office, and develop the record as to when and on how many occasions they visited the office and what the representatives at the office told claimant, including what "number from a letter" was needed to file a request for hearing, and whether that number was the "letter ID" number associated with decision # 83758. Exhibit 3 at 3. The ALJ should make inquiries necessary to assess whether

claimant's office visits constituted "otherwise express[ing] a present intent to appeal" decision # 83758 and were made "[i]n person at any publicly accessible Employment Department office in Oregon" such as to amount to a request for hearing per OAR 471-040-0005(1) and (2)(b) (July 15, 2018).

The ALJ should inquire how claimant was able to request a hearing on decision # 83758 on April 17, 2024, by using Frances Online and why claimant chose to do so on that day. The ALJ should inquire whether anything prevented claimant from using Frances Online to appeal decision # 83758 before April 17, 2024, such as if the transition to Frances Online was not yet complete. Finally, the ALJ should develop the record regarding the circumstances of claimant receiving a copy of decision # 83758 in the mail in July 2024, such as whether a copy of the administrative decision was delivered to claimant at their request or if the administrative decision mailed to claimant at that time was a modified or amended version of decision # 83758.

Order No. 24-UI-260689 therefore is set aside, and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 83758 should be allowed, and if so, the merits of that decision.

DECISION: Order No. 24-UI-260689 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: September 3, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-260689 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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