

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0592

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On May 25, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving benefits effective September 27, 2020 (decision # 90440). On June 14, 2021, decision # 90440 became final without claimant having filed a request for hearing.

On June 21, 2021, the Department served notice of an administrative decision concluding that claimant received benefits to which they were not entitled and assessing an overpayment of \$411 in regular unemployment insurance (regular UI) and \$300 in Lost Wages Assistance (LWA) benefits that claimant was required to repay. On July 12, 2021, the June 21, 2021, administrative decision became final without claimant having filed a request for hearing.

On April 19, 2022, the Department served notice of an administrative decision based in part on decision # 90440, concluding that claimant received benefits to which they were not entitled and assessing an overpayment of \$6,021 in regular UI and \$4,800 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay (decision # 103455). On May 9, 2022, decision # 103455 became final without claimant having filed a request for hearing.

On May 7, 2024, claimant filed late requests for hearing on decision # 90440 and the June 21, 2021, administrative decision. On May 17, 2024, claimant filed a late request for hearing on decision # 103455. ALJ Scott considered claimant's requests, and on July 24, 2024, issued Orders No. 24-UI-

260161, 24-UI-260139, and 24-UI-260173, dismissing the requests as late, subject to claimant's right to renew the requests by responding to appellant questionnaires by August 7, 2024.

On August 10, 2024, claimant filed late responses to the appellant questionnaires and timely applications for review of Orders No. 24-UI-260161, 24-UI-260139, and 24-UI-260173 with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-260161, 24-UI-260139, and 24-UI-260173. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2024-EAB-0594, 2024-EAB-0592, and 2024-EAB-0593).

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 responses to the appellant questionnaires, 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.

CONCLUSIONS AND REASONS: Orders No. 24-UI-260161, 24-UI-260139, and 24-UI-260173 are set aside and these matters remanded for hearings on whether to allow claimant's late requests for hearing on decision # 90440, the June 21, 2021, administrative decision, and decision # 103455 and, if so, the merits of those decisions.

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. 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 requests for hearing on decision # 90440, the June 21, 2021, administrative decision, and decision # 103455 were due by June 14, 2021, July 12, 2021, and May 9, 2022, respectively. Because claimant did not file their requests for hearing until May 17, 2024, the requests were late.

In their appellant questionnaire for Order No. 24-UI-260161,¹ claimant asserted that they "never received" decision # 90440, but that they instead received "notice via lien on [their] 2023 tax refund issued [in] May 2024." EAB Exhibit 1 at 1. Claimant further explained that when they received their tax refund in May 2024 and noticed that the Department had placed a lien on it (i.e., had intercepted the

¹ Claimant returned responses to the appellant questionnaire mailed for each of the three orders under review. However, only claimant's response to the questionnaire for Order No. 24-UI-260161 (regarding decision # 90440) contained any substantive information. See EAB Exhibit 1 at 1-2.

refund, presumably to recoup overpaid benefits), they called the Department, which “explained that [claimant] should file [an] appeal based on” decision # 90440. EAB Exhibit 1 at 2.

If claimant never received decision # 90440, they may have failed to file a timely request for hearing on that decision due to factors beyond their reasonable control. However, further development of the record is necessary to determine whether claimant had good cause to file the late request for hearing on decision # 90440 or the other two administrative decisions.

First, the ALJ should inquire as to when, if at all, claimant received or otherwise learned of the June 21, 2021, administrative decision and decision # 103455, as claimant did not explain this on their responses to the appellant questionnaires.

Next, none of the three administrative decisions were mailed to claimant’s current address of record in Portland, Oregon. Decision # 90440 and the June 21, 2021, administrative decision were mailed to an address in Gresham, Oregon, and decision # 103455 was mailed to a different address in Portland. This suggests that claimant may have moved one or more times during the times relevant to these matters. Therefore, the ALJ should inquire as to when claimant moved, when after each move they updated their address with the Department, and, if claimant failed to promptly update their address with the Department, whether they were claiming benefits or were aware of a pending appeal at the times that each of the three decisions were issued. The ALJ should also inquire as to whether claimant had been having issues receiving their mail at any of these addresses during the times when any of the decisions were mailed to them.

Finally, the ALJ should inquire as to what prompted claimant to file the requests for hearing on the June 21, 2021, administrative decision, and decision # 103455 when they did. This is particularly relevant in light of the fact that while claimant filed their requests for hearing on decision # 90440 and the June 21, 2021, administrative decision on May 7, 2024, they did not file their request for hearing on decision # 103455 until another ten days had passed. To the extent that claimant shows good cause for filing the late requests for hearing, the ALJ should thereafter determine whether, for each of the individual requests, claimant filed within the seven-day “reasonable time” period required under the rule.

Orders No. 24-UI-260161, 24-UI-260139, and 24-UI-260173 therefore are reversed, and these matters remanded for hearings on whether to allow claimant’s late requests for hearing on decision # 90440, the June 21, 2021, administrative decision, and decision # 103455 and, if so, the merits of those decisions.

DECISION: Orders No. 24-UI-260161, 24-UI-260139, and 24-UI-260173 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: August 23, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 24-UI-260161, 24-UI-260139, and 24-UI-260173 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these matters 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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