

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0667

Reversed & Remanded

PROCEDURAL HISTORY: On May 10, 2021, 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 \$1,672 in regular unemployment insurance (regular UI) and \$1,200 in Lost Wages Assistance (LWA) benefits that claimant had to repay, a \$501.60 monetary penalty, and an 11-week penalty disqualification from future benefits. On June 1, 2021, the May 10, 2021, overpayment decision became final without claimant having filed a request for hearing.

On December 21, 2023, claimant filed a late request for hearing. ALJ Kangas considered the request, and on January 8, 2024, issued Order No. 24-UI-244952, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 22, 2024. On January 29, 2024, Order No. 24-UI-244952 became final without claimant having filed an appellant questionnaire response or an application for review with the Employment Appeals Board (EAB). On August 23, 2024, claimant filed a late appellant questionnaire response. ALJ Kangas reviewed the response, and on September 4, 2024, issued Order No. 24-UI-264692, declining to consider the response because it was filed late, and re-dismissing claimant's request for hearing as late without good cause. On September 20, 2024, claimant filed a timely application for review of Order No. 24-UI-264692 with EAB.

EVIDENTIARY MATTER: Claimant's late appellant questionnaire response, marked by the Office of Administrative Hearings (OAH) as Exhibit 2 for identification only, contains information that was not part of the record considered by OAH, but factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information while the record was open at OAH. *See* ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019). Claimant provided their zip code on their late request for hearing, which did not match the address to which OAH mailed Order No. 24-UI-244952 and the appellant questionnaire. That OAH mailed that order to an address it had reason to know was incorrect was a circumstance beyond claimant's reasonable control that likely caused claimant not to receive the order or appellant questionnaire prior to the order becoming final. The information contained in Exhibit 2 therefore has been considered in reaching this decision.

WRITTEN ARGUMENT: EAB considered claimant’s written arguments in reaching this decision.

FINDING OF FACT: The May 10, 2021, overpayment decision, mailed to claimant’s address of record on file with the Department on that date, stated, “Any appeal from this decision must be filed on or before June 1, 2021, to be timely.” Exhibit 1 at 1. Claimant’s request for hearing was filed on December 21, 2023.

CONCLUSIONS AND REASONS: Order No. 24-UI-264692 is set aside and the matter remanded for a hearing on whether to allow claimant’s late request for hearing and, if so, the merits of the May 10, 2021, overpayment 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. 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 the May 10, 2021, overpayment decision was due by June 1, 2021. Because claimant’s request for hearing was filed on December 21, 2023, the request was late. In her appellant questionnaire response, claimant wrote, “I have not been a resident of [the address to which the overpayment decision was mailed] since 2021.” Exhibit 2 at 2. This suggests that claimant may have been prevented from timely filing a request for hearing due to the overpayment decision being mailed to an incorrect address. Further development of the record is therefore warranted to determine whether claimant’s late request for hearing should be allowed.

On remand, inquiry should be made as to when in 2021 claimant moved from the address to which the overpayment decision was mailed, whether claimant was claiming benefits at the time or knew or should have known of a pending appeal, whether claimant attempted to change their address on file with the Department, whether claimant eventually received a copy of the May 10, 2021, overpayment decision, and, if so, when. Further, if good cause is shown to extend the deadline for timely filing, additional inquiry should be made into whether claimant’s late request for hearing was filed within a “reasonable time” after the circumstances that prevented timely filing ended. Such inquiry should include when and how claimant learned of the existence of the May 10, 2021, overpayment decision and their right to file a late request for hearing, and when all circumstances that prevented timely filing ended.

For these reasons, Order No. 24-UI-264692 is set aside and the matter remanded for a hearing on whether to allow claimant’s late request for hearing and, if so, the merits of the May 10, 2021, overpayment decision.

DECISION: Order No. 24-UI-264692 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: October 9, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-264692 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 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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