

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0695

Reversed & Remanded

PROCEDURAL HISTORY: On July 10, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had failed to register for work in accordance with the Department's rules and was therefore ineligible to receive unemployment insurance benefits effective June 23, 2024, and until the reason for the denial had ended (decision # L0005065411). Also on July 10, 2024, the Department served notice of an administrative decision concluding that claimant had failed to provide identity verification information in accordance with the Department's rules and was therefore ineligible to receive unemployment insurance benefits effective July 7, 2024¹ and until the reason for the denial had ended (decision # L0005025813). On July 30, 2024, decisions # L0005065411 and L0005025813 became final without claimant having filed a request for hearing on either decision. On August 1, 2024, claimant filed a late request for hearing on each decision. ALJ Scott considered the requests, and on September 6, 2024, issued Orders No. 24-UI-265213 and 24-UI-265209, dismissing the requests for hearing on decisions # L0005065411 and L0005025813, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by September 20, 2024. On September 26, 2024, claimant filed a late appellant questionnaire response and timely applications for review of Orders No. 24-UI-265213 and 24-UI-265209 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-265213 and 24-UI-265209. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0694 and 2024-EAB-0695).

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 appellant questionnaire response, in the form of a written statement, and has been 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,

¹ Decision # L0005025813 stated that the ineligibility period began on Tuesday, July 9, 2024. However, as benefit weeks begin on a Sunday, it is presumed that the decision intended the ineligibility period to be effective Sunday, July 7, 2024.

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.

FINDING OF FACT: (1) Decisions # L0005065411 and L0005025813, mailed to claimant's address of record on file with the Department on July 10, 2024, each stated, "You have the right to appeal our decision and request a hearing if you believe our decision is wrong. We must receive your request for a hearing no later than **July 30, 2024.**" Order No. 24-UI-265213, Exhibit 1 at 2 (emphasis in original); Order No. 24-UI-265209 Exhibit 1 at 2 (emphasis in original). Claimant filed requests for hearing on decisions # L0005065411 and L0005025813 on August 1, 2024, using Frances Online.

CONCLUSIONS AND REASONS: Orders No. 24-UI-265213 and 24-UI-265209 are set aside, and these matters remanded for a hearing to determine whether claimant's late requests for hearing should be allowed and, if so, the merits of decisions # L0005065411 and L0005025813.

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. Good cause includes "[f]ailure to receive a document because the Employment Department or Office of Administrative Hearings mailed it to an incorrect address despite having the correct address." OAR 471-040-0010(1)(a)(A).

The requests for hearing on decisions # L0005065411 and L0005025813 were due by July 30, 2024. Because claimant's requests for hearing were filed on August 1, 2024, the requests were late. Claimant wrote in a statement accompanying the applications for review, "I was not receiving information or documents from the employment department by mail as I should have been." EAB Exhibit 1 at 1. Claimant further wrote that they later came to believe that this failure to receive correspondence resulted from a Department error that caused claimant's address of record to be slightly different from the mailing address claimant had provided when making their initial claim. EAB Exhibit 1 at 1. If claimant failed to receive decisions # L0005065411 and L0005025813 due to the Department misaddressing them despite claimant having provided the correct address, this may constitute good cause to extend the deadline for filing under OAR 471-040-0010(1)(a)(A) if the error prevented timely filing.

Claimant's written statement suggested that claimant discovered and attempted to resolve the address error at some point prior to September 9, 2024, but still did not receive any mailed correspondence from the Department thereafter and, on September 9, 2024, "was told to file hearing requests online, which [claimant] did that day." EAB Exhibit 1 at 1. However, claimant's requests for hearing on decisions # L0005065411 and L0005025813 were filed on August 1, 2024, via Frances Online, suggesting that claimant may have received or otherwise been aware of the administrative decisions by August 1, 2024, rather than first learning of them on September 9, 2024. Further development of the record is therefore warranted to determine whether claimant was prevented from timely filing the requests for hearing and, if so, whether the circumstances that prevented timely filing amounted to good cause.

On remand, inquiry should be made as to whether an address error delayed or prevented mail delivery of decisions # L0005065411 and L0005025813, when claimant discovered the error, when claimant

received decisions # L0005065411 and L0005025813 electronically or by mail or learned of them and the right to appeal them, and what prompted claimant to file the late requests for hearing on August 1, 2024, as opposed to some earlier date. Because claimant's late requests for hearing were filed within two days of the timely filing deadline, they were necessarily filed within a "reasonable time" if good cause exists to extend the deadline.

For these reasons, Orders No. 24-UI-265213 and 24-UI-265209 are set aside, and these matters remanded for a hearing to determine whether claimant's late requests for hearing should be allowed and, if so, the merits of decisions # L0005065411 and L0005025813.

DECISION: Orders No. 24-UI-265213 and 24-UI-265209 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: October 11, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 24-UI-265213 and 24-UI-265209 or return these matters to EAB. Only a timely application for review of the subsequent orders will cause the 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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