

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0704

Reversed
Request for Hearing Timely Filed
Merits Hearing Required

PROCEDURAL HISTORY: On July 15, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had failed provide information to the Department to verify their identity and was ineligible for benefits effective July 7, 2024 (decision # L0005147745).¹ On August 13, 2024, claimant filed a late request for hearing. ALJ Scott considered claimant’s request, and on September 12, 2024 issued Order No. 24-UI-265842, dismissing the request as late, subject to claimant’s right to renew the request by responding to an appellant questionnaire by September 26, 2024. On September 15, 2024, claimant filed a timely response to the appellant questionnaire. ALJ Kangas considered claimant’s response to the appellant questionnaire, and on September 19, 2024 issued Order No. 24-UI-266700, re-dismissing claimant’s request for hearing as late without good cause, leaving decision # L0005147745 undisturbed. On October 3, 2024, claimant filed an application for review of Order No. 24-UI-266700 with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of an additional administrative decision, # L0005203844, issued on July 15, 2024, and claimant’s request for hearing on that decision. This evidence 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, 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.

FINDINGS OF FACT: (1) On July 15, 2024, the Department mailed decision # L0005147745 to claimant’s address on file with the Department. Decision # L0005147745 stated, “You have the right to

¹ Decision # L0005147745 stated that claimant was denied benefits effective July 12, 2024. This date appears to be error, however, as July 12, 2024 was a Friday, and benefit denials begin on the Sunday of the effective week. As such, it is presumed that the Department intended to deny claimant benefits effective July 7, 2024.

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 **August 5, 2024.**” Exhibit 1 at 1 (emphasis in original).

(2) Also on July 15, 2024, 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 ineligible for benefits effective June 23, 2024 (decision # L0005203844). On August 3, 2024, claimant filed a timely request for hearing that the Department construed as on decision # L0005203844, but not decision # L0005147745. Claimant stated in the August 3, 2024 request for hearing, in relevant part, “I’m appeal[ing] because i have 3 week denial, July 13-2024. July-20-2024, and July-27-2024, that due for missing or update information in my i ma[t]chskills.” EAB Exhibit 1 at 4.

(3) On August 13, 2024, claimant filed another request for hearing indicating that they were “again” seeking to appeal a denial of benefits for the weeks ending July 13, 20, and 27, 2024. Exhibit 2 at 4. The Department construed this as a late request for hearing on decision # L0005147745.

(4) On September 15, 2024, claimant filed a timely response to the appellant questionnaire. In their response, claimant stated, “I [am] writing to you this letter to request my hearing appeal due to three (3) weeks of denial, those three weeks are from 13/7, 20/7 and 27 of [July] 2024, respectively[.] Now the reason why I did not get paid these weeks is because you guys said I did not follow the rules, and I did not give enough information about my ID.” Exhibit 3 at 1. Claimant also indicated that they had received a letter stating that the Office of Administrative Hearings (OAH) had received a request for hearing and was scheduling a hearing, but that he had not received, and was still waiting for, notice of the time and date of the hearing. Exhibit 3 at 1.

CONCLUSIONS AND REASONS: Claimant filed a timely request for hearing on decision # L0005147745. Order No. 24-UI-266700 therefore is reversed and this matter remanded for a hearing on the merits of decision # L0005147745.

OAR 471-040-0005(1) (July 15, 2018) states, “A Request for hearing may be filed on forms provided by the Employment Department or similar offices in other states. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed.”

The request for hearing on decision # L0005147745 was due by August 5, 2024. The order under review concluded that claimant had failed to file a timely request for hearing on decision # L0005147745. Order No. 24-UI-266700 at 2. The record does not support this conclusion.

The Department issued two administrative decisions on July 15, 2024: decision # L0005147745 at issue here, and decision # L0005203844. The former denied claimant benefits effective July 7, 2024, and the latter denied claimant benefits effective June 23, 2024. Based on claimant’s statements in their requests for hearing, it can be inferred that both denials were still in effect through at least the end of July. Thus, both had the effect of denying claimant benefits for the weeks from July 7 through 27, 2024 (weeks 28-24 through 30-24).

On August 3, 2024, claimant filed a request for hearing which the Department construed as a timely request for hearing on decision # L0005203844, but apparently not decision # L0005147745. This was

error. Under OAR 471-040-0050(1), a request for hearing is valid if it expresses “a present intent to appeal and it can be determined what issue or decision is being appealed.” In the August 3, 2024 request for hearing, claimant stated that they were appealing because of the denials of benefits for weeks 28-24 through 30-24. EAB Exhibit 1 at 4. Although claimant’s statement suggested that the issue was related to missing information in iMatchSkills (which might have been referencing the Department’s allegation that claimant failed to register for work), claimant’s statement was not so specific as to support the conclusion that they were *only* interested in appealing decision # L0005203844. Instead, it can be reasonably inferred from claimant’s statement that they sought to appeal both decisions which led to the denial of benefits for those weeks.

This inference is further supported by claimant’s statements in the August 13, 2024 request for hearing and the September 15, 2024 response to the appellant questionnaire. In the former, claimant indicated that they were “again” seeking to appeal a denial of benefits for the weeks ending July 13, 20, and 27, 2024. Exhibit 2 at 4. In the latter, claimant also referenced those denied weeks, and further explained that the reason why the weeks were denied was because the Department had determined that claimant “did not give enough information about [claimant’s] ID.” Exhibit 3 at 1. Claimant also indicated that they had received a letter stating that OAH had received a request for hearing and was scheduling a hearing, but that he had not received, and was still waiting for, notice of the time and date of the hearing. Exhibit 3 at 1.

Taken as a whole, claimant’s statements support an inference that claimant had always intended to appeal both of the administrative decisions issued on July 15, 2024, as those decisions both functioned to deny benefits for the weeks that claimant mentioned in their filings. As such, it can be determined from claimant’s statements which administrative decisions or issues were being appealed, and claimant’s August 3, 2024 request for hearing is properly applied to both decisions # L0005203844 and L0005147745. Claimant therefore filed a timely request for hearing on decision # L0005147745, and is entitled to a hearing on the merits of that decision.²

DECISION: Order No. 24-UI-266700 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 22, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-266700 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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² Office of Administrative Hearings (OAH) records indicate that, as of the date of this decision, a hearing has not yet been scheduled on decision # L0005203844. As such, EAB suggests that OAH consolidate the hearings on the merits of decisions # L0005203844 and L0005147745.

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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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