

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0723

Reversed
Requests for Hearing Timely Filed
Merits Hearings Required

PROCEDURAL HISTORY: On May 7, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had failed to provide information to the Department by failing to verify their identity and was therefore ineligible for unemployment insurance benefits effective May 5, 2024 (decision # L0003905967).¹ Also on May 7, 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 therefore was ineligible to receive benefits effective April 14, 2024 (decision # L0003936784). On June 11, 2024, claimant filed late requests for hearing on decisions # L0003905967 and L0003936784. ALJ Kangas considered claimant's requests, and on June 24, 2024, issued Orders No. 24-UI-257218 and 24-UI-257210, dismissing claimant's requests for hearing as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by July 8, 2024. On or around July 27, 2024, claimant filed a response to the appellant questionnaire that was received by the Office of Administrative Hearings (OAH) on July 29, 2024.

ALJ Kangas considered claimant's response to the appellant questionnaire, and on October 2, 2024, issued Orders No. 24-UI-268048 and 24-UI-268047, canceling Orders No. 24-UI-257218 and 24-UI-257210, respectively, re-dismissing claimant's late requests for hearing on decisions # L0003905967 and L0003936784, respectively, and leaving those decisions undisturbed. On October 14, 2024, claimant filed applications for review of Orders No. 24-UI-268048 and 24-UI-268047 with the Employment Appeals Board (EAB).

¹ Decision # L0003905967 stated that claimant was denied benefits effective May 6, 2024. This date appears to be error, however, as May 6, 2024, was a Monday, 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 May 5, 2024.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-268048 and 24-UI-268047. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0722 and 2024-EAB-0723).

WRITTEN ARGUMENT: Claimant’s argument contained information that was not part of the record while the matter was pending at OAH, and did not show that factors or circumstances beyond claimant’s reasonable control prevented them from offering the information at that time. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence by OAH when reaching this decision. EAB considered claimant’s argument to the extent it was based on the record.

The parties may offer new information, such as the new information contained in claimant’s written argument, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) On May 7, 2024, the Department mailed decision # L0003905967 to claimant’s address on file with the Department. Decision # L0003905967 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 **May 28, 2024.**” Order No. 24-UI-268048, Exhibit 1 at 2 (emphasis in original).

(2) Also on May 7, 2024, the Department mailed decision # L0003936784 to claimant’s address on file with the Department. Decision # L0003936784 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 **May 28, 2024.**” Order No. 24-UI-268047, Exhibit 1 at 2 (emphasis in original).

(3) Also on May 7, 2024, claimant sent a message to the Department via Frances Online, stating, in relevant part:

I have not had any luck using the phone system to get through to anyone to ask questions, so I’m hoping you can help me with this message system.

I received a notice that I did not complete the registration requirements. When I try to use the website to verify my identity, it asks for a password that I can not find in any communications you’ve sent me. How can I get this code? I have attached a photo of my WA state ID and passport.

I live in Washington state, and according to their website, one is automatically enrolled in the WA worksource program when one applies. I have applied. I was denied, but I’m awaiting an appeal. Unable to contact the WA office to ask questions (due to understaffing I assume) I made the assumption that maybe my WA claim was denied because I was working as a remote employee that lives in Washington, but whose employers are from other states (Oregon and Idaho). So I applied in Oregon and my claim was accepted.

Each week I complete the form with three employers (even though I've applied to a minimum of nine jobs each week). I don't understand why I'm receiving notices stating I haven't met the requirements for a job search. What am I doing wrong? Do I need to list ALL of the jobs I've applied for and not just three of them?

Order No. 24-UI-268048, Exhibit 2 at 5. Claimant enclosed copies of their driver's license and passport with the message.

CONCLUSIONS AND REASONS: Claimant filed timely requests for hearing on decisions # L0003905967 and L0003936784. Orders No. 24-UI-268048 and 24-UI-268047 are therefore reversed, and these matters remanded for hearings on the merits of decisions # L0003905967 and L0003936784.

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 requests for hearing on decisions # L0003905967 and L0003936784 were both due by May 28, 2024. The orders under review both concluded that claimant had failed to file timely requests for hearing on these decisions, finding that claimant did not file their requests for hearing until June 11, 2024. Order No. 24-UI-268048 at 1; Order No. 24-UI-268047 at 1. The record does not support these conclusions.

On May 7, 2024, claimant sent a message to the Department which outlined concerns claimant had about both of the issues addressed in decisions # L0003905967 and L0003936784. Given that claimant stated in the message that they "received a notice that [they] did not complete the registration requirements," it can be inferred that claimant sent this message after having received decisions # L0003905967 and L0003936784. Claimant also noted that they had difficulties verifying their identity and enclosed copies of their driver's license and passport with the message. Therefore, the record shows that claimant sent this message in response to having received those two decisions.

Further, although claimant did not explicitly state that they sought to appeal decisions # L0003905967 and L0003936784 in their May 7, 2024, message, it was nevertheless evident from claimant's statements that claimant disagreed with the outcome of those two decisions. As such, claimant's May 7, 2024, message is properly construed as an expression of a present intent to appeal the matters to which claimant referred in the message. Thus, under OAR 471-040-0005(1), claimant filed timely requests for hearing on decisions # L0003905967 and L0003936784, and claimant is entitled to hearings on the merits of those decisions.

DECISION: Orders No. 24-UI-268048 and 24-UI-268047 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: October 29, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 24-UI-268048 or 24-UI-268047 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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