

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0755

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On January 11, 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 therefore was ineligible for unemployment insurance benefits for the week of December 24, 2023 through December 30, 2023 (week 52-23) and until the reason for the denial had ended. Also on January 11, 2024, the Department served notice of an administrative decision concluding that claimant had failed to provide information to the Department by failing to verify her identity and was therefore ineligible for benefits for the weeks of December 24, 2023 through January 6, 2024 (weeks 52-23 through 01-24) and until the reason for the denial ended (decision # 112001). On January 31, 2024, the January 11, 2024 failure to register decision and decision # 112001 became final without claimant having filed requests for hearing. On February 16, 2024, the Department served notice of an administrative decision concluding that claimant had failed to provide her work-history information to the Department and was therefore ineligible for unemployment insurance benefits for the weeks of December 3, 2023 through January 20, 2024 (weeks 49-23 through 03-24) and until the reason for the denial ended (decision # 105921). On March 7, 2024, decision # 105921 became final without claimant having filed a request for hearing. On August 19, 2024, claimant filed late requests for hearing on the January 11, 2024 failure to register decision and decisions # 112001 and 105921.

ALJ Kangas considered claimant's requests, and on August 26, 2024 issued Orders No. 24-UI-263668, 24-UI-263660, and 24-UI-263671, dismissing claimant's requests for hearing on the January 11, 2024 failure to register decision and decisions # 112001 and 105921, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by September 9, 2024. On September 9, 2024, claimant filed a timely response to the appellant questionnaire. On September 10, 2024, the Office of Administrative Hearings (OAH) mailed letters stating that Orders No. 24-UI-263668, 24-UI-263660, and 24-UI-263671 were vacated and that a hearing would be scheduled to determine whether claimant had good cause to file her late requests for hearing on the three administrative decisions and, if so, the merits of those decisions. On October 4, 2024, ALJ Enyinnaya conducted a combined hearing on all three administrative decisions. The Department failed to appear at the hearing. On October 9, 2024, ALJ Enyinnaya issued Orders No. 24-UI-268756, 24-UI-268755, and

24-UI-268758, re-dismissing claimant's late requests for hearing on the January 11, 2024 failure to register decision and decisions # 112001 and 105921, respectively, and leaving those decisions undisturbed. On October 18, 2024, claimant filed applications for review of Orders No. 24-UI-268756, 24-UI-268755, and 24-UI-268758 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-268756, 24-UI-268755, and 24-UI-268758. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2024-EAB-0756, 2024-EAB-0757, and 2024-EAB-0755).

EVIDENTIARY MATTER: Claimant's response to the appellant questionnaire was marked at hearing as Exhibit 1. However, the records in each of these three matters already contained exhibits marked Exhibit 1 and Exhibit 2. For the sake of clarity, EAB has re-marked claimant's response to the appellant questionnaire as EAB Exhibit 1, and has provided a copy of that exhibit to the parties.

FINDINGS OF FACT: (1) On January 11, 2024, the Department mailed the January 11, 2024 failure to register decision to claimant's address on file with the Department. The January 11, 2024 failure to register decision stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than **01/31/2024**." Order No. 24-UI-268756, Exhibit 1 at 5 (emphasis in original).

(2) Also on January 11, 2024, the Department mailed decision # 112001 to claimant's address on file with the Department. Decision # 112001 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than January 31, 2024." Order No. 24-UI-268755, Exhibit 1 at 6.

(3) On February 16, 2024, the Department mailed decision # 105921 to claimant's address on file with the Department. Decision # 105921 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than March 7, 2024." Order No. 24-UI-268758, Exhibit 1 at 6.

(4) Prior to the issuance of at least one of the three administrative decisions, claimant missed a call from one of the Department's adjudicators regarding an issue affecting claimant's eligibility for benefits. The adjudicator left claimant a voicemail which advised claimant that if she returned the call, "it would be considered as a returned call, and that [her] case would not be closed[.]" Audio Record at 16:57. Claimant called the adjudicator back within two hours of the voicemail, but the adjudicator did not respond.

(5) Claimant received each of the administrative decisions shortly after they were mailed, and disagreed with them. However, claimant believed that the appropriate next step in the process was to continue to attempt to contact the adjudicator, which she continued to do so on a weekly basis for several months. Claimant never read the portions of the January 11, 2024 failure to register decision and decisions # 112001 and 105921 which advised her of her appeal rights, as she believed that waiting to speak to the adjudicator was the correct way to proceed.

(6) Because the adjudicator never returned claimant's call, claimant eventually visited a WorkSource office three times to seek help. On her first two visits, the representatives to whom claimant spoke advised her that "nothing more could be done." EAB Exhibit 1 at 2. On her third visit, on or around August 16, 2024, claimant spoke to another representative at WorkSource. That representative advised claimant to sign up for Frances Online in order to communicate with the Department about the case. Claimant did so, and a representative subsequently gave claimant information about her rights to appeal the administrative decisions. On August 19, 2024, claimant filed late requests for hearing on the three administrative decisions.

CONCLUSIONS AND REASONS: Claimant's late requests for hearing are dismissed.

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.

The requests for hearing on the January 11, 2024 failure to register decision and decision # 112001 were due by January 31, 2024, and the request for hearing on decision # 105921 was due by March 7, 2024. Because claimant did not file her requests for hearing on any of these decisions until August 19, 2024, the requests were late.

Claimant reported that she failed to file timely requests for hearing on all three of the administrative decisions because she believed that, as she had been contacted by one of the Department's adjudicators and had returned his call, waiting for a response from the adjudicator was the correct course of action. There exists a fair amount of uncertainty in the record as to when the relevant events occurred. For instance, claimant did not differentiate in her testimony between January 11, 2024 failure to register decision and decision # 112001, which were issued on January 11, 2024, and decision # 105921, which was issued over a month later on February 16, 2024. While she indicated that she had received the call from the adjudicator prior to her receipt of an administrative decision, she likewise did not explain which decision(s) arrived following the call from the adjudicator. Similarly, while claimant indicated on her response to the appellant questionnaire that she had been calling the adjudicator "every week since March 2024," and that she visited a WorkSource office three times afterwards to seek help, claimant suggested in her testimony that she had made the first two visits to WorkSource in February and March 2024. EAB Exhibit 1 at 2; Audio Record at 24:25. Thus, it is not clear from the record when claimant received the adjudicator's phone call and when she unsuccessfully sought advice from a WorkSource office.

Even assuming the facts most favorable to claimant, however, claimant has not shown that she had good cause for filing the late requests for hearing. For instance, even if it is assumed that claimant received the adjudicator's call prior to the issuance of the two January 2024 decisions, began calling the adjudicator in or around early January 2024, and visited a WorkSource office in February 2024, none of these circumstances would show that claimant was unable to read the directions on the administrative decisions which explained how to appeal them if she disagreed with them. Thus, claimant was not

prevented from filing timely requests for hearing on the three administrative decisions due to factors beyond her reasonable control.

Likewise, although claimant's decision to continue trying to contact the adjudicator, rather than following the instructions printed on the administrative decisions, was likely the result of a mistake on her part, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Claimant's explanation suggested that the adjudicator's voicemail, which indicated that returning the call would be "considered as a returned call," informed her decision to continue attempting to contact him. While claimant may have relied on this statement in determining her course of action, however, it was not reasonable to rely on it as a basis for that course of action. Claimant did not suggest, for instance, that the adjudicator, or anyone else, advised her that she could not or should not file requests for hearing while she waited for a response from the adjudicator, or that they advised her to ignore the instructions on the administrative decisions. Her belief that she should continue to try to contact the adjudicator instead of filing requests for hearing, then, was not an excusable mistake.

Because claimant failed to file timely requests for hearing on the three administrative decisions for reasons that were not due to factors beyond her reasonable control or an excusable mistake, claimant did not have good cause for filing the late requests for hearing. Claimant's late requests for hearing are therefore dismissed, and the January 11, 2024 failure to register decision and decisions # 112001 and 105921 remain undisturbed.

DECISION: Orders No. 24-UI-268756, 24-UI-268755, and 24-UI-268758 are affirmed.

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

DATE of Service: November 13, 2024

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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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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