

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0793-R

Reconsideration Allowed
Order No. 24-UI-270631 Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On July 22, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and was disqualified from receiving benefits effective October 13, 2019 (decision # 123100). On August 11, 2021, decision # 123100 became final without claimant having filed a request for hearing. On October 18, 2024, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on October 24, 2024, issued Order No. 24-UI-270631, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 7, 2024. On November 7, 2024, the deadline to provide a response to the appellant questionnaire passed without claimant having provided one. On November 8, 2024, claimant filed a timely application for review of Order No. 24-UI-270631 with the Employment Appeals Board (EAB).

On December 5, 2024, claimant emailed and mailed a written argument to EAB. On December 6, 2024, EAB issued EAB Decision 2024-EAB-0793, deeming claimant's written argument as not relevant or material in error and affirming Order No. 24-UI-270631. Claimant's mailed written argument was received on December 10, 2024. EAB has reviewed the written argument and reconsiders EAB Decision 2024-EAB-0793 on its own motion. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

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 written argument, has been marked as EAB Exhibit 1, and provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, saying why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit will remain in the record.

FINDINGS OF FACT: (1) On July 22, 2021, the Department mailed decision # 123100 to claimant's address on file with the Department. Decision # 123100 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 August 11, 2021.” Exhibit 1 at 2.

(2) Prior to June 2022, claimant was homeless and suffering from undiagnosed schizophrenia and substance abuse problems. As a result of these difficulties, claimant did not receive decision # 123100 when it was mailed by the Department.

(3) On August 11, 2021, decision # 123100 became final without claimant having filed a request for hearing.

(4) From June 2022 through February 2024, claimant was in prison. During that period, claimant became sober and began receiving treatment for his schizophrenia condition.

(5) On October 18, 2024, claimant contacted the Department about an overpayment waiver request. The representative claimant spoke with informed him of decision # 123100, and informed claimant that he could file a late request for hearing on decision # 123100.¹

(6) That same day, October 18, 2024, claimant filed a late request for hearing on decision # 123100.

CONCLUSIONS AND REASONS: Reconsideration is allowed. Claimant’s late request for hearing on decision # 123100 is allowed. This matter is remanded for a hearing on the merits of decision # 123100.

Reconsideration. ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including “the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law.” The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2) (May 13, 2019).

Claimant’s mailed written argument, received December 10, 2024, but postmarked December 5, 2024, arguably met the requirements of a timely request for reconsideration under OAR 471-041-0145, as it indicated that a copy was provided to the other parties and was filed before the 20th day after 2024-EAB-0793 was mailed. However, because the submission’s filing date is the postmark date of December 5, 2024, was emailed that same date, and predates the date EAB Decision 2024-EAB-0793 was issued, it is properly construed as a written argument and not a request for reconsideration.

Nevertheless, EAB is authorized to grant reconsideration on its own motion under ORS 657.290(3). Granting reconsideration per ORS 657.290(3) is warranted to correct EAB’s error of determining that claimant’s written argument, received by email on December 5, 2024, the day before EAB Decision 2024-EAB-0793 was issued, and not received by mail until December 10, 2024, was not relevant and material to EAB’s determination of whether to allow claimant’s late request for hearing on decision # 123100.

¹ EAB has taken notice of the facts contained in this paragraph, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed fact(s) will remain in the record.

Upon reconsideration, the written argument is deemed relevant and material to the issue of whether to allow claimant's late request for hearing on decision # 123100. In pertinent part, claimant's written argument states as follows:

During the period of time I filed for the pandemic unemployment assistance, I was homeless and using substances as a means to cope with the difficulties of living without a roof over my head. I was not medicated at the time and have since been diagnosed with schizophrenia disorder. I did not read the guidelines correctly and mistakenly used Fire and Rod LLC as one of my previous employers on the application for PUA. Had I been medicated and sober, I would have read the guidelines correctly and not used an establishment as a reference on the PUA document. Since the time of PUA, my life has drastically changed. I was sent to prison in June 2022 and released in February 2024. I have been completely sober since June 2022 and have been taking medication for schizophrenia disorder since August 2022. * * * Please understand that I have completely turned my life around since the time I applied for PUA. I had no interest in mistakenly claiming Fire and Rod LLC as a previous employer, I simply did not understand the underlying factors of the PUA document while suffering from an extreme level of schizophrenia/paranoia.

EAB Exhibit 1 at 1. During EAB's initial review, the foregoing information was not recognized as being relevant and material because it references PUA and the administrative decision at hand, decision # 123100, is a discharge decision under the regular unemployment insurance program.

However, the information establishes that prior to June 2022, claimant was homeless and suffering from an untreated mental health condition, and then was imprisoned from June 2022 through February 2024. These are circumstances that would have interfered with claimant's ability to receive mailings sent to his address of record, including decision #123100, and could have prevented him from ever learning about the existence of the decision. When the information from the written argument is considered in combination with information contained in Department records that, during a conversation with a Department representative on October 18, 2024, claimant was advised of the existence of decision # 123100 and was advised by the Department's representative that he was able to file a late request for hearing on the decision, it is evident that the information from the written argument is relevant and material and should be considered as additional evidence. As discussed below, this additional evidence, along with the noticed facts from Department records regarding claimant's contact with the Department on October 18, 2024, shows that claimant's late request for hearing should be allowed and Order No. 24-UI-270631 should be reversed.

For these reasons, reconsideration is allowed and the information contained in claimant's written argument has been considered as additional evidence.

Late Request for Hearing. 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 deadline for claimant to file a timely request for hearing on decision # 123100 was August 11, 2021. Claimant did not file a request for hearing until October 18, 2024. Accordingly, claimant's request for hearing was late.

Claimant failed to receive decision # 123100 because of his homelessness, untreated schizophrenia and substance abuse problems, which were factors beyond his reasonable control that prevented him from requesting a hearing by the August 11, 2021, deadline. Those factors ended on October 18, 2024, when, during a conversation with a Department representative, claimant learned of decision # 123100 and his right to file a late request for hearing on it. On the same day, claimant filed the late request for hearing on decision # 123100.

Accordingly, claimant established good cause to extend the deadline to file a request for hearing on decision # 123100 and did so within a reasonable time. Therefore, on reconsideration, claimant's late request for hearing is allowed. This matter is remanded for a hearing on the merits of decision # 123100.

DECISION: Claimant's request for reconsideration is allowed. On reconsideration, Order No. 24-UI-270631 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: January 2, 2025

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-270631 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.