

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0809

Reversed
Late Requests for Hearing Allowed
Merits Hearings Required

PROCEDURAL HISTORY: On October 31, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving benefits effective September 3, 2023 (decision # 115501). On November 20, 2023, decision # 115501 became final without claimant having filed a request for hearing. On December 7, 2023, the Department served notice of an administrative decision based partly on decision # 115501, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$1,230.00 overpayment that claimant was required to repay, a \$184.50 monetary penalty, and a seven-week penalty disqualification from future benefits (decision # 194151). On December 14, 2023, the Department served notice of an administrative decision concluding that claimant received \$54.00 benefits to which they were not entitled and must repay (decision # 193620). On December 27, 2023, decision # 194151 became final without claimant having filed a request for hearing. On January 3, 2024, decision # 193620 became final without claimant having filed a request for hearing.

On June 7, 2024, claimant filed late requests for hearing on decisions # 115501, 194151, and 193620, which the Department did not recognize as hearing requests. On June 12, 2024, claimant again filed late requests for hearing on decisions # 115501, 194151, and 193620. ALJ Kangas considered claimant's June 12, 2024, hearing requests, and on July 2, 2024, issued Orders No. 24-UI-257843, 24-UI-257841, and 24-UI-257838, dismissing the requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by July 16, 2024. On July 10, 2024, claimant filed a timely response to the appellant questionnaire. On September 11, 2024, the Office of Administrative Hearings (OAH) mailed letters stating that Orders No. 24-UI-257843, 24-UI-257841, and 24-UI-257838 were vacated and that hearings would be scheduled to determine whether to allow claimant's late requests for hearing and, if so, the merits of decisions # 115501, 194151, and 193620.

On October 29, 2024, ALJ Frank conducted hearings on claimant's late requests for hearing on decisions # 115501, 194151 and 193620, and on November 6, 2024, issued Orders No. 24-UI-272348,

24-UI-272349, and 24-UI-272347, dismissing the requests for hearing as late without good cause, leaving the administrative decisions undisturbed. On November 16, 2024, claimant filed applications for review of Orders No. 24-UI-272348, 24-UI-272349, and 24-UI-272347 with the Employment Appeals Board (EAB).

EAB combined its review of Orders No. 24-UI-272348, 24-UI-272349, and 24-UI-272347 under OAR 471-041-0095 (October 29, 2006). For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2024-EAB-0807, 2024-EAB-0808, and 2024-EAB-0809).

WRITTEN ARGUMENT: Claimant's arguments contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearings. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearings when reaching this decision. EAB considered claimant's arguments to the extent they were based on the hearing record.

FINDINGS OF FACT: (1) Prior to April 15, 2024, claimant lived at an address on 127th Avenue in Portland, Oregon. The 127th Avenue address was claimant's address of record with the Department.

(2) On October 31, 2023, the Department mailed decision # 115501 to claimant at the 127th Avenue address. Decision # 115501 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 November 20, 2023." Order No. 24-UI-272348 Exhibit 1 at 5.

(3) On December 7, 2023, the Department mailed decision # 194151 to claimant at the 127th Avenue address. Decision # 194151 stated, "To be timely, any appeal from this decision must be filed on or before DECEMBER 27, 2023." (emphasis in original). Order No. 24-UI-272349 Exhibit 1 at 7.

(4) On December 14, 2023, the Department mailed decision # 193620 to claimant at the 127th Avenue address. Decision # 193620 stated, "To be timely, any appeal from this decision must be filed on or before JANUARY 3, 2024." (emphasis in original). Order No. 24-UI-272347 Exhibit 1 at 5.

(5) Claimant did not receive decisions # 115501, 194151, or 193620 because the U.S. Postal Service returned them to the Department as undeliverable.

(6) On April 15, 2024, claimant moved from the 127th Avenue address to an address on Martin Luther King Boulevard in Portland. When she moved, claimant updated her address with the U.S. Postal Service.

(7) In May 2024, the Department mailed a collections invoice to claimant seeking repayment of the overpayments reflected in decisions # 194151 and 193620. The Department mailed the invoice to the 127th Avenue address, and the U.S. Postal Service forwarded it to claimant's new address on Martin Luther King Boulevard. Claimant received the invoice after it was forwarded to the Martin Luther King Boulevard address. When claimant received the forwarded invoice, she learned for the first time that the Department considered her liable for an overpayment.

(8) On May 30, 2024, claimant contacted the Department regarding the invoice. Claimant spoke with a representative who advised her of the existence of decisions # 115501, 194151, and 193620. The representative also gave claimant “appeal instructions” on the administrative decisions. Orders No. 24-UI-272349 and 24-UI-272347 Audio Record at 28:25. Claimant’s call with the representative was her first contact with the Department since the Department’s transition to the Frances Online system. Previously, claimant had used a Zendesk web form system to communicate with the Department, but that system no longer existed as of the May 30, 2024, call. Claimant needed access to her new Frances Online account to file requests for hearing on decisions # 115501, 194151, and 193620. To access Frances Online, claimant needed the Department to give her a PIN. During the call, claimant asked the representative for a PIN to access her Frances Online account.

(9) On May 31, 2024, claimant gained access to her Frances Online account and updated her address of record with the Department to the address on Martin Luther King Boulevard.

(10) On June 7, 2024, claimant used a messaging system available through her Frances Online account to send a message to the Department stating, “I am writing to formally appeal the denial of my unemployment benefits for the weeks ending September 2, 9, and 16, 2023.” Exhibit 2 at 97. The message concluded with “I am officially requesting an appeal of the decision and a waiver for the overpayment balance . . . I have signed up for an account on Frances Online and am prepared to provide any additional information to support my case.” Exhibit 2 at 100.

(11) The Department did not recognize claimant’s June 7, 2024, message as requests for hearing on decisions # 115501, 194151, and 193620. On June 12, 2024, claimant used a separate feature of her Frances Online account to file hearing requests on decisions # 115501, 194151, and 193620.

CONCLUSIONS AND REASONS: Orders No. 24-UI-272348, 24-UI-272349, and 24-UI-272347 are reversed, claimant’s late requests for hearing are allowed, and hearings on the merits of decisions # 115501, 194151 and 193620 are required.

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. “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.” OAR 471-040-0005(1) (July 15, 2018).

The request for hearing on decision # 115501 was due by November 20, 2023. The request for hearing on decision # 194151 was due by December 27, 2023. The request for hearing on decision # 193620 was due by January 3, 2024. Because claimant did not file her requests for hearing on decisions # 115501, 194151 and 193620 until June 7, 2024, the requests for hearing were late.

The orders under review dismissed claimant’s late requests for hearing, concluding that claimant had established good cause for filing her appeals late but that she had not filed them within a reasonable

time. Order No. 24-UI-272348 at 3; Order No. 24-UI-272349 at 3; Order No. 24-UI-272347 at 3. However, the record does not support the conclusions of the orders under review.

Claimant established good cause to file her requests for hearing late and did so within a reasonable time. Claimant did not receive decisions # 115501, 194151 or 193620 because the US Postal Service returned the administrative decisions to the Department as undeliverable. Claimant therefore did not know of the existence of the decisions or her right to appeal them, which were factors beyond her reasonable control that prevented her from filing appeals in a timely manner. On May 30, 2024, claimant spoke with a Department representative who advised her of the existence of decisions # 115501, 194151 and 193620, and gave her “appeal instructions” on the administrative decisions. Orders No. 24-UI-272349 and 24-UI-272347 Audio Record at 28:25. However, the factors that prevented claimant from filing did not end at that time, because claimant did not yet have access to her Frances Online account, and access to Frances Online was necessary to appeal decisions # 115501, 194151 and 193620. Claimant needed the Department to give her a PIN to access her Frances Online account. During the May 30, 2024, call, claimant asked the representative for a PIN. Claimant likely received the PIN and was able to access her Frances Online account on May 31, 2024, because the record shows that on that date, claimant used France Online to update her address of record with the Department to the Martin Luther King Boulevard address. Therefore, the factors the prevented claimant from filing requests for hearing did not end until May 31, 2024.

Claimant filed her hearing requests within a seven-day “reasonable time” of May 31, 2024. On June 7, 2024, claimant used a Frances Online messaging system to tell the Department, “I am writing to formally appeal the denial of my unemployment benefits for the weeks ending September 2, 9, and 16, 2023.” Exhibit 2 at 97. The message concluded, “I am officially requesting an appeal of the decision and a waiver for the overpayment balance . . . I have signed up for an account on Frances Online and am prepared to provide any additional information to support my case.” Exhibit 2 at 100. This message expressed a present intent to appeal, and included enough detail to determine that claimant wished to appeal all three decisions, as “the weeks ending September 2, 9, and 16, 2023” are the weeks at issue reflected in decisions # 194151 and 193620, and the disqualification reflected in decision # 115501 was the source of claimant’s “denial of . . . unemployment benefits[.]” Exhibit 2 at 97.

Claimant’s June 7, 2024, message via Frances Online therefore constituted late requests for hearing on decisions # 115501, 194151 and 193620. The requests were filed within seven days of May 31, 2024, the date the factors that prevented timely filings ended. Accordingly, claimant established good cause to file her hearing requests late and filed them within a reasonable time. Claimant’s late requests for hearing are allowed, and claimant is entitled to hearings on the merits of decisions # 115501, 194151 and 193620.

DECISION: Orders No. 24-UI-272348, 24-UI-272349, and 24-UI-272347 are set aside, and the matters remanded for further proceedings consistent with this order.

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

DATE of Service: December 13, 2024

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 24-UI-272348, 24-UI-272349, or 24-UI-272347 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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