

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0874

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On May 9, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work, available for work, or actively seeking work during the week of February 25, 2024, through March 2, 2024 (week 09-24) and therefore was not eligible to receive unemployment insurance benefits for that week (decision # L0004043994). Also on May 9, 2024, the Department served notice of an administrative decision concluding that claimant was not able to work, available for work, or actively seeking work during the week of March 3, 2024, through March 9, 2024 (week 10-24) and therefore was not eligible to receive benefits for that week (decision # L0004081632). On May 29, 2024, decisions # L0004043994 and L0004081632 became final without claimant having filed requests for hearing. On June 27, 2024, claimant filed late requests for hearing on decisions # L0004043994 and L0004081632.

ALJ Kangas considered claimant's requests, and on December 3, 2024, issued Orders No. 24-UI-275461 and 24-UI-275471, dismissing claimant's requests for hearing on decisions # L0004043994 and L0004081632, respectively, as late, subject to claimant's right to renew the requests by responding to appellant questionnaires by December 17, 2024. On December 23, 2024, claimant filed late responses to the appellant questionnaires and timely applications for review of Orders No. 24-UI-275461 and 24-UI-275471 with the Employment Appeals Board (EAB).

EAB combined its review of Orders No. 24-UI-275461 and 24-UI-275471 under OAR 471-041-0095 (October 29, 2006). For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0874 and 2024-EAB-0873).

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 responses to the appellant questionnaires, 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.

CONCLUSIONS AND REASONS: Orders No. 24-UI-275461 and 24-UI-275471 are set aside and these matters remanded for a hearing on whether claimant's late requests for hearing on decisions # L0004043994 and L0004081632 should be allowed and, if so, the merits of those decisions.

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 decisions # L0004043994 and L0004081632 were due by May 29, 2024. Because claimant did not file their requests for hearing until June 27, 2024, the requests were late. On their responses to the appellant questionnaires, however, claimant asserted that they filed timely requests for hearing on both decisions on May 29, 2024, explaining, "I was on the phone for 3 hours and told my hearing time would be mailed to me via phone[.] I saved all my papers, notes and never got the letter." EAB Exhibit 1 at 1, 3.

On remand, the ALJ should inquire as to the specifics of the call that claimant made to the Department on May 29, 2024, to determine whether claimant filed timely requests for hearing. This should include whether claimant stated to the Department representative that they were requesting hearings on decisions # L0004043994 and L0004081632, and what the representative told claimant in response. Additionally, claimant may offer new information, such as copies of phone logs, written notes, or other evidence which shows when they called the Department, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. Claimant 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 claimant 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.

To the extent that the record on remand shows that claimant filed timely requests for hearing on decisions # L0004043994 and L0004081632, the ALJ should proceed to the merits of those decisions. If the record on remand does *not* show that claimant filed timely requests for hearing, the ALJ should develop the record to determine whether claimant's late requests for hearing on those decisions should be allowed.

Orders No. 24-UI-275461 and 24-UI-275471 therefore are reversed, and these matters remanded for a hearing on whether claimant filed timely requests for hearing; if not, whether claimant's late requests for hearing should be allowed; and, if appropriate, the merits of decisions # L0004043994 and L0004081632.

DECISION: Orders No. 24-UI-275461 and 24-UI-275471 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: January 17, 2025

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 24-UI-275461 and 24-UI-275471 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 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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