

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0118

Reversed
Late Request for Hearing Allowed

PROCEDURAL HISTORY: On November 20, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 94501). On December 10, 2018, decision # 94501 became final without claimant having filed a timely request for hearing. On December 17, 2018, claimant filed a late request for hearing. On December 26, 2018, ALJ Kangas issued Order No. 18-UI-121771, dismissing claimant's late request for hearing subject to her right to renew the request by responding to an appellant questionnaire by January 9, 2019. On January 8, 2019, claimant responded to the appellant questionnaire. On January 11, 2019, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 18-UI-121771 was canceled. On January 15, 2019, OAH mailed notice of a hearing scheduled for January 29, 2019. On January 29, 2019, ALJ Murdock conducted a hearing, and on January 31, 2019 issued Order No. 19-UI-123749, re-dismissing claimant's late request for hearing. On February 4, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) At all relevant times, claimant was homeless. She received mail at a relative's house, but the relative sometimes got upset with and abusive toward claimant and withheld her mail or her phone.

(2) By approximately December 6, 2018, claimant received notice of decision # 94501. She called the Department to discuss her case. A Department employee advised her on the phone to file her request for hearing and provided her with an email address.

(3) Claimant subsequently went to a WorkSource Oregon office to participate in the welcome process. She was feeling overwhelmed and spoke to the employee about her case. As a result of the conversation she misunderstood that the deadline for filing a timely request for hearing on decision # 94501 was December 20, 2018.

(4) At some point between December 6, 2018 and December 17, 2018, claimant attempted to email her request for hearing to the Department. The email was rejected and bounced back to claimant because she had used an invalid email address.

(5) At all relevant times claimant was adjusting to a new medication. As a result, she did not feel like she was in her best frame of mind. She made cognitive mistakes that she would not otherwise have made if she had been in the right frame of mind.

(6) On December 17, 2018, claimant called the Department to get the request for hearing email address. She noted the address as oed_ui_hearingsrequest@oregon.gov. She tried to send a request for hearing to that address, but the request was rejected. Later the same day, claimant faxed her request for hearing to the Department.

(7) At all relevant times, the correct email address for requests for hearings was oed_ui_hearingsreq@oregon.gov.¹

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude that claimant had good cause for the late request for hearing and is entitled to a hearing on the merits of decision # 94501.

ORS 657.269 provides that parties have 20 days from the date of an administrative decision to file a timely request for hearing. Under ORS 657.875, that time period may be extended a reasonable time upon a showing of good cause. OAR 471-040-0010 defines “reasonable time” as “seven days after the circumstances that prevented a timely filing ceased to exist,” and “good cause” as “an excusable mistake or [] factors beyond an applicant’s reasonable control.”

The ALJ concluded that claimant did not have good cause in this case, and that because claimant’s testimony overall “was vague, inconsistent and confusing, she did not persuasively establish” good cause. Order No. 19-UI-123749 at 2-3. We agree with the ALJ that claimant’s testimony was somewhat vague and confusing, but disagree with the ALJ and conclude that claimant did establish good cause for the late request for hearing.

It was difficult to discern the specific reason for claimant’s late request for hearing in this case for the reasons the ALJ identified. However, it appears that one or all of three reasons caused claimant’s late request. First, claimant was homeless and received mail through an abusive relative who sometimes withheld her mail. To the extent that her homelessness and mail receipt situation caused or contributed to claimant’s late filing in this case, we conclude that those factors were beyond claimant’s reasonable control.

Second, to the extent claimant did not understand the request for hearing deadline or misunderstood what she was told by Department employees on the phone or in the WorkSource Oregon center, the record shows that claimant was at all relevant times overwhelmed by her circumstances. Claimant was adjusting to a new medication, not in a good frame of mind, and as a result was having cognitive difficulties she did not ordinarily experience. To the extent claimant’s inability to file a timely request for hearing was the result of cognitive impairments she experienced while adjusting to a new medication, that was a circumstances beyond her reasonable control. To any extent such factors might be considered within an individual’s reasonable control, any mistakes claimant made in the execution of

¹ We take notice of this fact, which is publicly available on the Oregon Employment Department website. Any party that objects to our doing so 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(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

her request for hearing in that context were likely excusable ones given that they occurred despite her substantial efforts to comply with the procedural requirements at issue, including calls to the Department, consultation with a WorkSource Oregon employee, and two attempted emails.

Third, it is clear that claimant mistakenly, and likely repeatedly, tried to email her request for hearing to the wrong email address. The record shows she was told the email address over the phone and then mistakenly addressed her emails to oed_ui_hearingsrequest@oregon.gov instead of addressing them to the correct address, oed_ui_hearingsreq@oregon.gov. The difference between “hearingsrequest” and “hearingsreq” is minimal, and might not be apparent when spoken. For example, when the ALJ asked the Department employee to confirm the email address claimant used during the hearing, and read the address claimant used including saying the full word “request,” the Department employee confirmed that the address as read was correct. Audio recording at ~ 23:00-23:15. To the extent claimant’s late request for hearing was the result of her mistakenly sending her request for hearing email to a “hearingsrequest” address instead of the correct “hearingsreq” address, the mistake was likely the result of her inability to follow the instructions she received on the phone despite substantial efforts to comply. It was therefore an excusable mistake.

Because the factor(s) that caused or contributed to claimant filing a late request for hearing were the result of circumstances beyond her control or excusable mistakes, it is more likely than not that claimant had good cause to extend the filing deadline.

The filing deadline may only be extended a “reasonable time,” which means seven days after the date the circumstances that prevented a timely filing ceased to exist. In this case, only seven days lapsed between the actual request for hearing deadline and the date claimant filed her late request for hearing. Therefore, regardless of which of those days the circumstances ceased to exist, claimant filed her late request for hearing within the seven-day reasonable time period.

Claimant’s late request for hearing is, therefore, allowed. Claimant is entitled to a hearing on the merits of decision # 94501.

DECISION: Order No. 19-UI-123749 is set aside, as outlined above.

J. S. Cromwell and S. Alba;
D. P. Hettle, not participating.

DATE of Service: February 22, 2019

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 Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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