

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0238

Reversed ~ Revocada

Late Request for Hearing Allowed ~ La Petición Tardía Para Una Audiencia Es Permitida
Hearing on Decision # 194746 Required ~ Se Requiere una Audiencia Sobre Decisión # 194746

PROCEDURAL HISTORY: On January 13, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$620 overpayment that claimant was required to repay, a \$93 monetary penalty, and four penalty weeks (decision # 194746). The decision stated that to be timely, any appeal must be filed by February 3, 2020. On February 3, 2020, decision # 194746 became final without claimant having filed a request for hearing. On February 10, 2020, claimant filed a late request for hearing. On March 9, 2020, ALJ Monroe conducted a hearing that was interpreted in Spanish, and on March 11, 2020, issued Order No. 20-UI-146037, dismissing claimant's late request for hearing and concluding decision # 194746 remained undisturbed. On March 16, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

HISTORIA PROCESAL: *El 13 de enero de 2020, el Departamento de Empleo de Oregon (el Departamento) envió notificación de una decisión administrativa imponiendo una orden para recuperar un sobrepago de \$620, una multa monetaria de \$93, y una multa de cuatro semanas (decisión # 194746). La decisión decía que cualquier apelación de esa decisión debe presentarse no más tarde que el 3 de febrero de 2020. La decisión se convirtió en final el 3 de febrero de 2020 sin que el reclamante hubiera presentado una aplicación oportuna para una audiencia. El 10 de febrero de 2020, el reclamante sometió una aplicación tardía para una audiencia. El 9 de marzo de 2020, la jueza administrativa Monroe llevó a cabo una audiencia que fue interpretada en español, y el 11 de marzo de 2020, emitió la Orden No. 20-UI-146037, rechazando la aplicación tardía del reclamante para una audiencia y concluyendo que la decisión # 194746 permaneció intacta. El 16 de marzo de 2020, el reclamante presentó una aplicación de revisión de la orden judicial a La Junta de Apelaciones de Empleo (EAB).*

EAB considered claimant's written argument in reaching this decision. *EAB consideró el argumento por escrito del reclamante para llegar a esta decisión.*

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant did not file a timely request for hearing on decision #

194746 is **adopted**. The remainder of the decision addresses whether claimant's late request for hearing should be allowed.

FINDINGS OF FACT: (1) On November 9, 2019, claimant traveled to Mexico to be with his daughter who was ill in the hospital.

(2) On January 16, 2020, decision # 194746 arrived at claimant's address in Oregon. Claimant was still in Mexico with his sick daughter. Claimant's daughter opened the decision and read the decision, including the February 3, 2020 appeal deadline, to claimant over the telephone. The appeal rights and procedure handout that was included with the decision stated how to request a hearing via email, facsimile or mail. Claimant's daughter did not read to claimant the instructions about how to appeal the decision, and claimant did not understand from what his daughter read to him that he could request a hearing by letter. Claimant knew at that time that he disagreed with the decision, wanted to appeal it, and the appeal deadline was February 3, 2020. Claimant did not ask his daughter in Oregon to appeal the decision for him because he did not generally ask his daughter to do things like that for him, and claimant did not think the Department would accept his appeal from his daughter or wife.

(3) Claimant was not able to call the Department from Mexico because he was staying with his daughter in the hospital. Claimant had a cellular telephone, but did not get cellular reception to place a call from the hospital. Claimant did not return to Oregon until February 7, 2020 due to his daughter's illness and because he had already purchased his airplane tickets to return to Oregon on February 7. On February 7, 2020, claimant returned to Oregon. On February 10, 2020, claimant visited a local WorkSource office, told them he wanted to appeal decision # 194746, and filed an appeal that day.

CONCLUSION AND REASONS: Order No. 20-UI-146037 is reversed, and claimant is entitled to a hearing on the merits of decision # 194746. *La Orden de la Audiencia 20-UI-146037 se deja a un lado, y se requiere una audiencia sobre decisión # 194746.*

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.

Order No. 20-UI-146037 implicitly concludes that claimant did not have good cause to extend the deadline to request a hearing because he could have requested a hearing in a timely manner by telephone, or could have had his daughter in Oregon request a hearing on his behalf. The record does not support these conclusions.

Claimant was in Mexico attending to his sick daughter in a hospital when the administrative decision was mailed to his address in Oregon. Although claimant's daughter read the decision to him and claimant understood the deadline to request a hearing, claimant did not have the ability to request a hearing from Mexico because he was in the hospital with his daughter, where he did not have cellular reception for his telephone, and presumably did not have access to mail or facsimile to send a request for hearing to the Department in Oregon. Even if claimant had telephone access, the decision did not state

claimant could appeal by telephone, or how to appeal via telephone. Nor does the decision state that another person such as claimant's daughter could request a hearing on claimant's behalf. Exhibit 1.

Claimant lacked the means to request a hearing while he was attending to his daughter in Mexico. Those were circumstances beyond claimant's reasonable control. Claimant therefore had good cause to extend the filing period. The circumstances that prevented a timely filing ceased to exist on February 7, 2020, when claimant returned to Oregon. Claimant filed a late request for hearing three days later. Claimant's late filing was therefore within the seven-day reasonable time period. Claimant established good cause to extend the filing period a reasonable time. His late request for hearing is therefore allowed.

DECISION: Order No. 20-UI-146037 is set aside, as outlined above. *La Orden de la Audiencia 20-UI-146037 se deja a un lado, de acuerdo a lo indicado arriba.*

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

DATE of Service: April 10, 2020

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

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.