

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0286-R

*On Reconsideration, EAB Decision 2020-EAB-0286 Vacated
Order No. 20-UI-146093 Reversed & Remanded*

PROCEDURAL HISTORY: On February 3, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from January 5, 2020 through January 11, 2020 (decision # 140847). On February 24, 2020, decision # 140847 became final without claimant having filed a timely request for hearing. On March 10, 2020, claimant filed a late request for hearing. On March 12, 2020, ALJ Kangas issued Order No. 20-UI-146093, dismissing claimant's late request for hearing subject to claimant's right to renew the request by responding to an appellant questionnaire by March 26, 2020. On April 6, 2020, claimant filed an application for review of Order No. 20-UI-146093 with the Employment Appeals Board (EAB), which was construed by EAB as late. On April 9, 2020, EAB issued EAB Decision 2020-EAB-0286, dismissing claimant's application for review.

This decision is issued pursuant to EAB's authority under ORS 657.290(3).

EVIDENTIARY RULING: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's response to the appellant questionnaire, which has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. EAB has also taken notice of the Department's customary practices with respect to forwarding applications for review to EAB, which is within EAB's specialized knowledge. OAR 471-041-0090(1). Any party that objects to our admitting EAB Exhibit 1 or taking notice of a fact within EAB's specialized knowledge must submit such objection(s) 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 and noticed fact will remain in the record.

FINDINGS OF FACT: (1) On Wednesday, March 18, 2020, claimant faxed an eight-page document to the Department. The fax consisted of: an Office of Administrative Hearings (OAH) certificate of mailing; a signed and dated application for review form; a completed, signed, and dated appellant questionnaire response; and four other pages from an OAH order.

(2) The certificate of mailing claimant faxed on March 18th stated that the appellant questionnaire deadline was March 26, 2020. It also stated that the application for review deadline was April 1, 2020.

(3) On Thursday, March 19, 2020, the Department's "R&R01" department stamped the eight-page document as received. The application for review form was not forwarded to EAB consistent with the Department's customary practices. The appellant questionnaire was not forwarded to OAH until June 29, 2020.

CONCLUSIONS AND REASONS: Claimant filed a timely response to the appellant questionnaire issued with Order No. 20-UI-146093 and is entitled to a hearing on whether or not he has established good cause to extend the filing deadline in that case, and filed the late request for hearing within a reasonable time.

ORS 657.290(3) authorizes EAB, upon its own motion, 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."

EAB's original review in this matter was based upon an incomplete record. Specifically, at the time of EAB's original review, the record showed: 1) that claimant had not filed a timely response to the appellant questionnaire, and 2) that claimant had not filed a timely application for review with EAB. EAB's original decision, 2020-EAB-0286, was based upon those facts, neither of which were true.

The record in this matter has now been supplemented with evidence showing: 1) that claimant filed a *timely* response to the appellant questionnaire, and 2) that EAB filed a *timely* application for review with EAB. EAB's initial review in this matter therefore was not consistent with statute (*see* ORS 657.275(2), which requires EAB to perform "de novo review on the record"), fact, or principles of due process, and reconsideration is required.

On reconsideration, it is apparent that claimant submitted a timely response to the appellant questionnaire, and what he wrote on that questionnaire was sufficient to raise the question of whether or not he had good cause for filing the late request for hearing on decision # 140847. As such, EAB Decision 2020-EAB-0286 is vacated. Order No. 20-UI-146093 is set aside. Claimant is entitled to a hearing on the late request for hearing issue. Only if claimant establishes good cause for the late request for hearing would he then be entitled to a hearing on the merits of decision # 140847.

This matter is being referred to the Office of Administrative Hearings for additional proceedings consistent with this order.

DECISION: On reconsideration, EAB Decision 2020-EAB-0267 is vacated. Order No. 20-UI-146093 is set aside, and this matter remanded to the Office of Administrative Hearings for further proceedings consistent with this order.

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

DATE of Service: July 1, 2020

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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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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
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