

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0450

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On May 26, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work for the week from April 9, 2017 through April 15, 2017 (week 15-17) and was ineligible for benefits for that week (decision # 143953). On June 15, 2017, decision # 143953 became final without claimant having filed a request for hearing. On April 3, 2020, claimant filed a late request for hearing. On April 16, 2020, ALJ Kangas issued Order No. 20-UI-148188, dismissing claimant's request for hearing as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 30, 2020.

On April 23, 2020, claimant filed a timely response to the appellant questionnaire. On April 29, 2020, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 20-UI-148188 was cancelled and that a hearing would be scheduled. On April 30, 2020, OAH mailed notice of a hearing scheduled for May 14, 2020 to consider claimant's late request for hearing, and if granted, the merits of decision # 143953. On May 14, 2020, ALJ Micheletti conducted a hearing at which the employer failed to appear, and on May 21, 2020 issued Order No. 20-UI-150129, re-dismissing claimant's late request for hearing as without good cause, leaving decision # 143953 undisturbed. On June 9, 2020, claimant filed a timely application for review of Order No. 20-UI-150129 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On May 26, 2017, the Department mailed decision # 143953 to claimant's then address of record on file with the Department. However, by the end of April 2017, claimant had ceased claiming benefits and had moved to a new address. As a result, claimant did not receive decision # 143953, which the United States Postal Service (USPS) returned to the Department as undeliverable. Exhibit 1.

(2) On May 27, 2017, the Department mailed a second administrative decision, decision # 193345, also to claimant's address of record on file with the Department, where claimant no longer lived. Decision # 193345 imposed an overpayment, a monetary penalty, and a penalty disqualification period from future

benefits of nine weeks based on alleged misrepresentations made by claimant when claiming benefits, in part, for week 15-17. Based on claimant's change of address, he did not receive decision # 193345, which the USPS also returned to the Department as undeliverable.

(3) In late January 2018, claimant became aware that the Department was attempting to collect overpaid benefits through a garnishment of claimant's wages. Over the next several weeks, claimant had conversations with a Department representative about the garnishment, reducing the garnishment amount, and repaying the overpaid benefits and monetary penalty, which claimant did. During the conversations that occurred, the representative explained that the overpayment was based, in part, on claimant's report of his availability for work during week 15-17. However, claimant remained unaware of the existence of decision # 143953, and Department records do not show that it notified claimant that there was an underlying and appealable decision regarding claimant's availability for work during week 15-17.

(4) In March 2020, claimant became unemployed and filed a claim for unemployment insurance benefits. On or about April 3, 2020, the Department informed claimant that he had to serve a nine-week penalty disqualification period prior to receiving any benefits, which he had been unaware of until that time. The Department then emailed claimant a copy of decision # 143953. On April 3, 2020, claimant filed a request for hearing on decision # 143953.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 143953 is allowed. Claimant is entitled to a hearing on the merits of that decision.

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-150129 concluded that claimant failed to show good cause for his late request for hearing, and for that reason his hearing request was subject to dismissal, reasoning:

[I]nitially, circumstances beyond claimant's reasonable control prevented him from becoming aware of the May 26, 2017 administrative decision, because the Department mailed the administrative decision to an address where claimant no longer received his mail. However, those circumstances ceased to exist in January and February 2018, because claimant became aware that an adverse decision had been issued by the Department, which resulted in an overpayment which had gone to collections. After receiving this information in 2018, claimant did not pursue an appeal of the May 26, 2017 administrative decision. Rather, once claimant became aware that the May 26, 2017 administrative decision caused him to be subject to serving a weekly penalty did claimant file an appeal of the administrative decision on April 3, 2020. Although circumstances beyond claimant's reasonable control initially prevented him from filing a timely request for hearing, those circumstances ceased to exist in January 2018 and claimant then waited more than two years

to file a request for hearing. Two years is not a “reasonable time” as it is defined in OAR 471-040-0010(3).

Order No. 20-UI-150129 at 3. However, the order’s conclusion is not supported by the record.

Although it may have been within claimant’s reasonable control to inquire about the possible existence of an underlying decision concerning his availability for work during week 15-17, his assertion that he was unaware of such a decision until early April is undisputed. Audio Record at 27:00 to 30:00. The department’s witness testified that Department records fail to show that when it communicated with claimant in January and February of 2018, it put him on notice that there was an underlying and appealable decision regarding either claimant’s availability for work during that week or the overpayment and penalties it later imposed. Audio Record at 34:00 to 37:00. Accordingly, the preponderance of the evidence shows that claimant was unaware that decision # 143953 had been issued on May 26, 2017 until approximately April 3, 2020.

The next issue that must be considered is whether claimant’s late request for hearing was the result of an excusable mistake. An “excusable mistake” is generally considered a mistake that raises a due process issue, or was the result of inadequate notice, reasonable reliance on another or the inability to follow directions despite substantial efforts to comply. Here, there are issues concerning due process or inadequate notice. The Department’s witness admitted that its records failed to show that when it communicated with claimant in January and February of 2018, it put him on notice that there was an underlying and appealable decision regarding claimant’s availability for work during week 15-17 even though decision # 143953 had been returned to the Department by the USPS as undeliverable. Due process requires that claimant receive notice of the decision for which he must request a hearing, and here that did not occur until shortly before or on April 3, 2020. Claimant’s failure to inquire about the possible existence of an underlying decision concerning his availability for work during week 15-17 therefore was an excusable mistake.

The remaining issue is whether claimant filed his request for hearing within a reasonable time. The circumstances that prevented a timely filing ceased to exist on April 3, 2020, when claimant received the decision by email from the Department. Claimant filed his request for hearing the same day, which is less than seven days after the circumstances that prevented at timely filing ceased to exist. Claimant therefore filed his request for hearing within a reasonable time.

Claimant’s late request for hearing on decision # 143953 therefore is allowed. Claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 20-UI-150129 is set aside, as outlined above.

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

DATE of Service: June 19, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-150129 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter 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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