

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0481

Reversed & Remanded

PROCEDURAL HISTORY: On October 22, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause, and was disqualified from receiving benefits effective July 14, 2019 (decision # 151612). On November 12, 2019, decision # 151612 became final without claimant having filed a timely request for hearing.¹ On May 3, 2020, claimant filed a late request for hearing. On May 27, 2020, ALJ Kangas issued Order No. 20-UI-150257, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by June 10, 2020. On June 11, 2020, claimant filed a late response to the questionnaire and a timely application for review with the Employment Appeals Board (EAB). On June 17, 2020, ALJ Kangas mailed a letter to claimant stating that his late response to the questionnaire would not be considered. This matter is before EAB based upon claimant's timely June 11th application for review.

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 two-page appellant questionnaire response, which has been marked as EAB Exhibit 1, and a screenshot of a claim comment regarding claimant's case, which has been marked as EAB Exhibit 2. A copy of both exhibits has been provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 or EAB Exhibit 2 into evidence 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(s) will remain in the record.

FINDINGS OF FACT: (1) Claimant received notice of decision # 151612 over the phone and, sometime in October or November 2019, contacted the Department to request a hearing. During the call, he dissented or disagreed with the decision while speaking to a Department employee on the phone.²

¹ The procedural history reflects the facts as known on the date this decision was served. Depending on facts gathered during the remand hearing, the finality of decision # 151612 and date of claimant's hearing request are subject to change.

² The source of the facts in this paragraph was EAB Exhibit 1.

(2) Claimant's call to the Department took place on October 30, 2019, only eight days after the Department issued decision # 151612. During the call, claimant told a Department employee that he needed assistance filing the appeal. The Department employee gave claimant the phone number for the Office of Administrative Hearings (OAH). The Department employee tried to give claimant the email address for OAH, but claimant did not want it.³

CONCLUSIONS AND REASONS: This matter is reversed, and remanded for additional evidence regarding claimant's request for hearing.

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.

Prior to July 15, 2018, the Department routinely accepted requests for hearing by telephone.⁴ Effective July 15, 2018, the Department adopted an administrative rule providing that individuals requesting a hearing on an administrative decision related to an unemployment insurance benefits matter could file by "mail, fax, e-mail, or other means as designated by Employment Department," or in person at any publicly accessible Employment Department office in Oregon.⁵ As of August 13, 2018, however, it was the Department's official policy to continue accepting telephonic hearing requests as a courtesy under "limited circumstances, and based on individual needs and barriers" through September 13, 2018, and thereafter for individuals with "language, literacy, or other access issues."⁶ The policy memo instructed Department employees, "If after explaining how to appeal the decision the customer raises an issue, or you have reason to believe they do not understand the instructions, complete the telephone request for hearing." At all relevant times, individuals who needed to request a hearing by phone were permitted to do so, and all requests for hearing were required to be filed with the Employment Department rather than the Office of Administrative Hearings (OAH).⁷

The record in the immediate case shows that claimant "needed assistance filing the appeal." In response, rather than accepting a telephone request for hearing in accordance with the instructions set forth in the UI Memo, or telling claimant how to properly request a hearing in writing by mailing, faxing, or e-mailing his request to the Department, the Department employee with whom claimant spoke gave him the phone number for OAH. At all relevant times, however, OAH was not permitted to accept requests for hearing.

It appears likely in this case that claimant's inability to file a timely request for hearing either by phone on October 30th or soon thereafter using a valid method for requesting a hearing was negatively affected by the advice he was given on October 30th, such that filing a timely request for hearing was beyond his reasonable control or the result of mistake in his understanding that was excusable because he was not

³ The source of the facts in this paragraph was EAB Exhibit 2.

⁴ See OAR 471-040-0005 (v. July 14, 2011).

⁵ OAR 471-040-0005(2).

⁶ See August 13, 2018 UI Memo, "New Hearing Request Process."

⁷ See OAR 471-040-0005; August 13, 2018 UI Memo, "New Hearing Request Process."

given accurate instructions by the Department when he called to request assistance. Additional evidence is necessary, however, to determine whether claimant filed a timely request for hearing on October 30th, or whether he had good cause to file a late request for hearing under the circumstances.

ORS 657.270 requires that claimant be provided with a reasonable opportunity for a fair hearing. That obligation necessarily requires that a hearing be scheduled so that an ALJ can conduct a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary, Order No. 20-UI-150257 is reversed, and this matter is remanded.

DECISION: Order No. 20-UI-150257 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 25, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-150257 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 desisyong ito.

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.

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