

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0542

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On May 14, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct, and claimant was disqualified from receiving unemployment insurance benefits effective November 24, 2019 (decision # 64121). On June 3, 2020, decision # 64121 became final without claimant having filed a timely request for hearing.

On June 4, 2020, claimant filed a late request for hearing. On June 18, 2020, ALJ Kangas issued Order No. 20-UI-151244, dismissing claimant's late request for hearing, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 2, 2020. On June 23, 2020, claimant filed a timely response to the appellant questionnaire. On June 30, 2020, the Office of Administrative Hearings (OAH) mailed a letter stating Order No. 20-UI-151244 was vacated, and notice that a hearing scheduled for July 14, 2020 to consider claimant's late request for hearing, and if granted, the merits of decision # 64121.

On July 14, 2020, ALJ Amesbury conducted a hearing at which the employer failed to appear, and on July 15, 2020 issued Order No. 20-UI-152202, re-dismissing claimant's late request for hearing as without good cause, leaving decision # 64121 undisturbed. On July 21, 2020, claimant filed a timely application for review of Order No. 20-UI-152202 with the Employment Appeals Board (EAB).

Claimant filed a written argument in support of their application for review. EAB considered claimant's argument to the extent it was based on the hearing record.

FINDINGS OF FACT: (1) On or about April 4, 2020, claimant filed an initial claim for unemployment insurance benefits. From April 6, 2020 through May 15, 2020, the Department processed weekly, continued claims for benefits claimant filed, each of which was denied.¹

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing.

(2) On May 14, 2020, the Department mailed decision # 64121 to claimant's address of record on file with the Department. Decision # 64121 stated, in relevant part, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than June 3, 2020." Exhibit 1.

(3) Claimant resided with her husband. They received their mail at a locked mailbox on their residential street. Each of them possessed a mailbox key and they shared equally the responsibility for picking up their mail and bringing it into the house. Claimant or her husband typically checked the mail at least once per day.

(4) Decision # 64121 was received by claimant at the locked mailbox of claimant and her husband in the regular course of the mail. Claimant's husband brought decision # 64121 into their residence on an unknown date but "considerably earlier" than the June 3, 2020 appeal deadline. Audio Record at 35:00 to 36:00. Claimant's husband placed the mail on an office desk in their residence but did not tell claimant that she had received a letter from the Department. Claimant had not alerted her husband that if she received mail from the Department, she was relying on him to tell her about that mail.

(5) Claimant discovered the envelope containing decision # 64121 late on the evening of June 3, 2020 as she walked through their office "on [her] way to bed." Audio Record at 29:15 to 30:00. She opened the envelope, read the decision, and learned that the deadline for an appeal of the decision was that day, June 3, 2020. Although claimant "saw that the next morning was going to be one day after" the deadline, she did not file a hearing request that evening because "it was late" and she was on her way to bed. Audio Record at 28:30 to 30:00.

(6) On June 4, 2020, claimant filed a request for hearing on decision # 64121 by email.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 64121 is dismissed.

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.

The Department mailed decision # 64121 to claimant at her address of record on May 14, 2020. Based on the date of mailing, the 20-day deadline for claimant to file a timely request for hearing was June 3, 2020. Claimant did not file her request for hearing until June 4, 2020. Accordingly, claimant's hearing request was late.

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 noticed facts will remain in the record.

Claimant failed to show that factors beyond her reasonable control prevented her from filing a timely hearing request. Claimant's husband testified that he brought the mailing that contained decision # 64121 into their residence "considerably earlier" than June 3, 2020, the day on which claimant opened the envelope and read the decision. Although the exact date on which claimant received decision # 64121 at her address is unknown, a letter duly directed and mailed is presumed to be received in the regular course of the mail. ORS 40.135(1)(q). More likely than not, claimant received decision # 64121 at her locked mailbox a few days after the Department mailed it, "considerably earlier" than the June 3, 2020 appeal deadline, as claimant's husband testified. Claimant testified that her husband put the mail containing the decision on a shared office desk in their residence and that she did not see it until June 3, 2020, when she examined the documents on the desk on her way to bed. Claimant did not establish that it was beyond her reasonable control to either ask her husband if she had received any mail from the Department or look for such mail prior to June 3, 2020, particularly when she knew or should have known her recent benefit claims had been denied.

Claimant also failed to show that an excusable mistake prevented her from filing a timely hearing request. Although claimant's failure to file a timely hearing request was likely the result of a mistake on her part, the record fails to show that it was an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, or show that it was the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Although claimant apparently expected her husband to tell her when she had received Department mail, the record fails to show that she had alerted him that if she received mail from the Department, she was relying on him to tell her if and when such mail was received.

Because claimant failed to show that factors beyond her reasonable control or an excusable mistake prevented her from filing a hearing request by the June 3, 2020 deadline, claimant failed to establish good cause to extend the filing deadline beyond June 3, 2020. Accordingly, claimant's late request for hearing is dismissed, leaving decision # 64121 undisturbed.

DECISION: Order No. 20-UI-152202 is affirmed.

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

DATE of Service: August 6, 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.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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 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.

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.