

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0666

Reversed
Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On June 24, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective January 26, 2020 (decision # 113441). Claimant filed a request for hearing. On September 23, 2020, OAH mailed notice of a hearing scheduled for October 5, 2020 to consider claimant's request for hearing and, if granted, the merits of decision # 113441. On October 5, 2020, ALJ Williams conducted a hearing at which the employer failed to appear, and on October 13, 2020 issued Order No. 20-UI-155210, dismissing claimant's request for hearing as late without good cause, leaving decision # 113441 undisturbed. On October 19, 2020, claimant filed a timely application for review of Order No. 20-UI-155210 with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). OAR 471-041-0090(1)(a) provides, in relevant part, that EAB may receive additional evidence into the record if necessary to complete the record.

At hearing, Exhibit 1 was admitted into evidence and was the basis on which Order No. 20-UI-155210 concluded claimant's request for hearing was untimely. Exhibit 1 is an email the ALJ described as claimant's "request for appeal" dated August 27, 2020. Audio Record at 3:20 to 5:25. That email identified claimant by name and CID #, referenced decision # 113441, and then stated in relevant part:

I received confirmation that my hearing request was received on 7/3/2020 but have not received any further information. Do I have a hearing scheduled? If not, how much longer will it be before a hearing is scheduled? I have been unable to reach anyone that can give me any information. Can someone please email or call me at [referenced telephone number].

The additional evidence EAB has considered consists of two emails claimant submitted with his application for review. The first email, dated July 3, 2020, was sent to the Department's hearing request email address and identified claimant by his name and OED identification number (CID #), referenced

decision # 113441, and went on to explain why claimant believed he had not quit his job with the employer, which claimant identified by name. The second email, also dated July 3, 2020, was a return email from the Department, which stated in relevant part, “We have received your request for hearing.”

The two emails described are necessary to complete the record as they confirm claimant’s statement in Exhibit 1 that he “received confirmation that my hearing request was received on 7/3/2020...” The emails have been marked as EAB Exhibits 1 and 2, respectively, and a copy of each has been provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1 and 2 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 exhibits will remain in the record.

FINDINGS OF FACT: (1) On June 24, 2020, the Department mailed decision # 113441 to claimant’s address of record on file with the Department. Decision # 113441 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 July 14, 2020.” Decision # 113441 at 2.

(2) Claimant received decision # 113441 on July 2, 2020 and read the decision, including the paragraph regarding his right to appeal the decision and the deadline to do so.

(3) On July 3, 2020, claimant’s friend sent an email on claimant’s behalf to the Department’s hearing request email address, oed_ui_hearingsreq@oregon.gov. The email included claimant’s name and customer ID number, referenced the employer and decision # 113441, and explained why claimant disagreed with decision # 113441’s conclusion that he quit work without good cause. EAB Exhibit 1.

(4) On July 3, 2020, the Department responded to claimant’s July 3 email by sending a return email to the address claimant used on July 3, 2020, which stated in relevant part, “We have received your request for hearing.” EAB Exhibit 2.

(5) On July 27, 2020, claimant sent an email to the Department inquiring about the status of his hearing request. The email stated, in relevant part:

I received confirmation that my hearing request was received on 7/3/2020 but have not received any further information. Do I have a hearing scheduled? If not, how much longer will it be before a hearing is scheduled? I have been unable to reach anyone that can give me any information. Can someone please email or call me at [referenced telephone number].

Exhibit 1.

CONCLUSIONS AND REASONS: Claimant filed a timely request for hearing on decision # 113441 on July 3, 2020. Claimant’s request for hearing therefore is allowed, and a hearing on the merits of decision # 113441 is required.

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. A request for hearing may be filed on forms provided by the Employment Department, but use of those forms is not required provided the party

specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed. OAR 471-040-0005(1) (July 15, 2018). A request for hearing on an administrative decision related to the payment or amount of unemployment insurance benefits may be filed by mail, fax, e-mail, or other means as designated by the Department with the appealable document. OAR 471-040-0005(2)(a).

In this case, the Department issued decision # 113441 on June 24, 2020. To be timely, a request for hearing on decision # 113441 was required to be filed on or before July 14, 2020. The order under review found that claimant filed a request for hearing on decision # 113441 by email on July 27, 2020 and concluded that because the hearing request was not filed before the July 14, 2020 deadline, it was untimely. Order No. 20-UI-155210 at 2-3. However, the record, which now includes EAB Exhibits 1 and 2, does not support that conclusion.

Claimant filed a request for hearing on decision # 113441 by email on July 3, 2020, well before the July 14, 2020 deadline. EAB Exhibit 1. Although that email did not specifically request a hearing on decision # 113441, it included claimant's name and customer ID number, referenced the employer and decision # 113441, and explained why claimant disagreed with decision # 113441's that he quit work without good cause. By responding by email that same day, stating, "We have received your request for hearing," the Department acknowledged that claimant's July 3 email expressed a present intent to appeal decision # 113441, and constituted a valid and timely request for hearing.

For the foregoing reasons, claimant filed a timely request for hearing on decision # 113441. Accordingly, claimant's request for hearing on decision # 113441 is allowed, and claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 20-UI-155210 is set aside, as outlined above. Claimant is entitled to a hearing on the merits of decision # 113441.

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

DATE of Service: October 30, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-155210 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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 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.

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