

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0797

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On March 5, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and disqualified from receiving unemployment insurance benefits effective October 20, 2019 (decision # 91636). On March 25, 2020, decision # 91636 became final without claimant having filed a timely request for hearing. On September 30, 2020, claimant filed a late request for hearing on decision # 91636. On October 6, 2020, ALJ Kangas issued Order No. 20-UI-154858, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 20, 2020. On October 23, 2020, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 20-UI-154858 with the Employment Appeals Board (EAB). On October 26, 2020, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late. On November 17, 2020, EAB issued Appeals Board Decision 2020-EAB-0687, reversing Order No. 20-UI-154858 and remanding this matter for further development of the record. On December 1, 2020, ALJ Murdock conducted a hearing, and on December 7, 2020 issued Order No. 20-UI-157315, again dismissing claimant's hearing request as late. On December 19, 2020, claimant filed an application for review of Order No. 20-UI-157315 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On March 5, 2020, the Department mailed decision # 91636 to claimant's address of record on file with the Department. The decision stated that any appeal of the decision must be filed on or before March 25, 2020 to be timely.

(2) At the time that the Department mailed the administrative decision to claimant, her address of record was her brother's address, as she did not have a permanent address at which to receive mail. Claimant was living elsewhere at the time. Claimant never received decision # 91636. Claimant's relationship with her sister-in-law was troubled, and she later came to believe that her sister-in-law, who lived with claimant's brother, had discarded the decision.

(3) Claimant first learned about decision # 91636 on September 10, 2020, when she called the Department because she had not received any information about her claim. During that call, a representative for the Department advised claimant how to request a hearing.

(4) On September 10, 2020, claimant was living in a motor home park without either regular internet access or postal service delivered to her home. The park's office did not have a fax machine. At the time, claimant did not have access to a vehicle, and relied on medical transport to get to and from her appointments. Because claimant was not receiving mail at her home at the time, she did not consider mailing a request for hearing to the Department.

(5) On September 30, 2020, claimant again called the Department. At that time, a Department representative took claimant's request for hearing over the phone.

CONCLUSIONS AND REASONS: Claimant's late request for hearing 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 deadline for claimant to file a timely request for hearing on decision # 91636 expired on March 25, 2020. Because claimant's request for hearing was not filed until September 30, 2020, the request was late. However, claimant did not receive decision # 91636, and did not learn of its existence until she called the Department on September 10, 2020. More likely than not, factors beyond claimant's reasonable control prevented her from requesting a hearing on decision # 91636 by the March 25, 2020 deadline. Claimant therefore established good cause to extend the deadline.

However, the factors that prevented claimant from filing a request for hearing ceased to exist on September 10, 2020, when claimant learned of decision # 91636. Under OAR 471-040-0005(2)(a), a request for hearing on an administrative decision related to the payment of unemployment insurance benefits may be filed, in relevant part, "by mail, fax, e-mail, or other means as designated" by the Department. Claimant's testimony established that she did not have ready access to her e-mail or a fax machine. However, when asked why she did not request a hearing by mail, claimant testified that, because she was unable to receive mail where she was living, she did not consider the possibility of writing a letter and taking it into town. Audio Record at 25:55. While her circumstances may have made mailing a letter somewhat inconvenient, claimant did not offer evidence that she could not have done so. Claimant's testimony suggested that she had some access to both her motor home park's office and one or more medical offices. Without evidence to the contrary, it is reasonable to infer that any of those offices would have regular outgoing mail service, of which claimant could have taken advantage in order to mail a request for hearing.

Claimant filed a request for hearing on September 30, 2020, which was 20 days after the factors that prevented claimant from filing a request for hearing had passed. Because claimant did not file her

request for hearing within seven days after September 10, 2020, she did not file her late request for hearing within a “reasonable time” after the factors that prevented a timely filing ceased to exist.

Therefore, claimant’s late request for hearing on decision # 194820 is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 20-UI-157315 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: January 5, 2021

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.

NOTE: This decision denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the “Contact Us” form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

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 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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