

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0011

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On May 12, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant failed to provide information necessary to process his claim as requested by the Department and therefore was denied benefits for the week of March 15, 2020 through March 21, 2020 (decision # 54320). Also on May 12, 2020, 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 April 12, 2020 (decision # 52322). On June 1, 2020, decisions # 54320 and # 52322 became final without claimant having filed a timely request for hearing.

On November 16, 2020, claimant filed late requests for hearing on decisions # 54320 and # 52322. On December 14, 2020, ALJ Kangas issued Orders No. 20-UI-157599 and 20-UI-157604, dismissing claimant's late requests for hearing, subject to claimant's right to renew the requests by responding to an appellant questionnaire by December 28, 2020. On January 3, 2021, claimant filed late responses to the appellant questionnaires and timely applications for review of Orders No. 20-UI-157599 and 20-UI-157604 with the Employment Appeals Board (EAB). On January 6, 2021, ALJ Kangas mailed letters to claimant stating that because claimant's responses to the questionnaires were late, they would not be considered, other orders would not be issued, and Orders No. 20-UI-157599 and 20-UI-157604 remained in effect. These matters are now before EAB based on claimant's January 3, 2021 applications for review of Orders No. 20-UI-157599 and 20-UI-157604.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-157599 and 20-UI-157604. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0012 and 2021-EAB-0011, respectively).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching these decisions under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's identical 2-page response to the appellant questionnaire in each case, which claimant submitted with his applications for review. Each has been marked as EAB Exhibit 1 and a copy provided to the parties with these decisions. Any party that objects to our admitting EAB Exhibit 1 into the record of each case 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 objections are received and sustained, the exhibit(s) will remain in the record.

FINDINGS OF FACT: (1) On May 12, 2020, the Department mailed decision # 54320 to claimant's address on file with the Department. Decision # 54320 explained that the deadline for a timely appeal of the decision was June 1, 2020, and also stated that, "If you do not understand this decision, contact the Unemployment Insurance Center above immediately." Exhibit 1 (Order No. 20-UI-157599).

(2) On May 12, 2020, the Department also mailed decision # 52322 to claimant's address on file with the Department. Decision # 52322 stated, "Any appeal from this decision must be filed on or before June 1, 2020 to be timely," and also stated that, "If you do not understand this decision, contact the Unemployment Insurance Center above immediately." Exhibit 1 (Order No. 20-UI-157604).

(3) Claimant received decisions # 54320 and # 52322 on June 5, 2020. EAB Exhibit 1.

(4) Claimant did not file requests for hearing on decisions # 54320 and # 52322 until November 16, 2020 because he "didn't know what to do" and filed for PUA (Pandemic Unemployment Assistance) "until [he] talked to someone at Employment." EAB Exhibit 1 at 1-2.

CONCLUSIONS AND REASONS: Claimant's late requests for hearing on decisions # 54320 and # 52322 are 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. OAR 471-040-0010(1)(b)(B) also provides that good cause does not include not understanding the implications of a decision or notice when it is received.

The deadline for claimant to file a timely request for hearing on decisions # 54320 and # 52322 expired on June 1, 2020, more than 5 months before he filed his requests for hearing on November 16, 2020. Accordingly, the requests for hearing were late.

Claimant did not establish that he had good cause for extending the deadline for filing timely requests for hearing to November 16, 2020. Although claimant explained in his questionnaire responses that he received decisions # 54320 and # 52322 on June 5, 2020, he did not offer any explanation for why he first received or became aware of those decisions 24 days after they were mailed. Even assuming that claimant had good cause for not receiving or becoming aware of decisions # 54320 and # 52322 until June 5, 2020, he failed to show he filed his requests for hearing within a "reasonable time" after that date. Claimant did not file his requests for hearing until more than five months after becoming aware of decisions # 54320 and # 52322. In his response to the appellant questionnaire, claimant stated that he did not file his requests for hearing until November 16, 2020 because he "didn't know what to do," and filed for PUA (Pandemic Unemployment Assistance) "until [he] talked to someone at Employment." However, claimant failed to explain why, if he "didn't know what to do," he waited until November of

2020 to “talk[] to someone at Employment.” Regardless, claimant did not establish that he filed his late requests for hearing within the seven-day “reasonable time” period after the factors that prevented a timely filing may have ceased to exist.

For those reasons, claimant failed to show good cause for his late requests for hearing, and the requests are therefore dismissed.

DECISION: Orders No. 20-UI-157599 and 20-UI-157604 are affirmed.

S. Alba and D. P. Hettle.

DATE of Service: January 19, 2021

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.

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 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 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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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.