

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0031

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On June 30, 2020, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report concluding claimant did not qualify for unemployment insurance benefits because they had not earned at least six times their weekly benefit amount since the beginning of their previous unemployment claim. On July 10, 2020, the June 30, 2020 Wage and Potential Benefit Report decision became final without claimant having filed a timely request for hearing. On November 30, 2020, claimant filed a late request for hearing. ALJ Kangas reviewed claimant's request, and on December 21, 2020 issued Order No. 20-UI-157923, dismissing the request as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 4, 2021. On December 29, 2020, claimant filed a timely response to the appellant questionnaire. ALJ Kangas reviewed claimant's questionnaire response and, on January 8, 2021 issued Order No. 21-UI-158858, re-dismissing claimant's late request for hearing as without good cause, leaving the June 30, 2020 Wage and Potential Benefit Report decision undisturbed. On January 13, 2021, claimant filed a timely application for review of Order No. 21-UI-158858 with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) On June 30, 2020, the Department mailed a Wage and Potential Benefit Report decision to claimant's address on file with the Department. Claimant received the decision shortly after it was mailed. The June 30, 2020 Wage and Potential Benefit Report decision stated, in relevant part, "This report becomes final unless you request redetermination of the report or request a hearing within 10 days...The time limit for requesting a hearing may be extended for good cause." Exhibit 1.

(2) On August 21, 2020 claimant faxed a request for redetermination to the Department. Exhibit 3. Claimant did not receive a response.

(3) On November 30, 2020 claimant faxed another request for redetermination to the Department, which was construed as a late request for hearing on the June 30, 2020 Wage and Potential Benefit Report decision. Exhibit 2.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on the June 30, 2020 Wage and Potential Benefit Report decision is dismissed.

ORS 657.266 provides that the Department's initial determination of eligibility and amount of benefits becomes final unless a party files a request for redetermination or hearing within 10 days after the date the decision is mailed. ORS 657.875 provides that the 10-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 the June 30, 2020 Wage and Potential Benefit Report decision to claimant at their address of record on June 30, 2020. The 10-day deadline for claimant to file a timely request for hearing was July 10, 2020. Claimant did not file a request for redetermination until August 21, 2020 and their request for hearing until November 30, 2020. Accordingly, even if claimant's August 21, 2020 request for redetermination is also construed as a request for hearing, both requests were late.

Claimant did not establish that factors beyond their reasonable control prevented them from filing a timely hearing request. In their response to the appellant questionnaire, claimant did not deny that they received the June 30, 2020 Wage and Potential Benefit Report decision. Exhibit 3. Although the exact date on which claimant received that decision at their address of record 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). Claimant did not describe any circumstances suggesting that they did not receive the decision until after the July 10, 2020 deadline to request a hearing. Claimant explained that a request for hearing was not filed before the stated deadline because they were "unable to make contact [with] anyone at [the] phone numbers I found." Exhibit 3. However, claimant's requests for redetermination were filed by fax on two different occasions and claimant did not assert or show that it was beyond their reasonable control to similarly file a request for hearing by fax on or before the July 10, 2020 deadline.

To any extent claimant's failure to file a timely hearing request was the result of a mistake on claimant's part, it was not an "excusable mistake" within the meaning of the administrative rules. The record does not, for example, raise a due process issue, and fails to show that any mistake was the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Because claimant failed to show that factors beyond their reasonable control or an excusable mistake prevented them from filing a hearing request by the July 10, 2020 deadline, claimant failed to establish good cause to extend the deadline to file a hearing request beyond July 10, 2020. Accordingly, claimant's late request for hearing is dismissed, leaving the June 30, 2020 Wage and Potential Benefit Report decision undisturbed.

DECISION: Order No. 21-UI-158858 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: January 29, 2021

NOTE: This decision denies payment of 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.

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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 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.