

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0056

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On September 24, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was paid \$1,062 in regular benefits and \$1,800 in Federal Pandemic Unemployment Compensation (FPUC) benefits to which he was not entitled, and assessing an overpayment of \$2,862 he was required to repay to the Department (decision # 150242). On October 14, 2020, decision # 150242 became final without claimant having filed a timely request for hearing. On October 20, 2020 and November 6, 2010, claimant filed a late request for hearing. ALJ Kangas reviewed claimant's November 6th request for hearing, and on December 10, 2020 issued Order No. 20-UI-157469, 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 December 24, 2020. On December 15, 2020, claimant filed a timely response to the appellant questionnaire. On December 29, 2020, the Office of Administrative Hearings (OAH) mailed claimant a letter stating that Order No. 20-UI-157469 was cancelled and that a hearing would be scheduled. On December 30, 2020, OAH mailed notice of a hearing scheduled for January 13, 2021 to consider whether claimant's late request for hearing should be allowed and if so, the merits of decision # 150242. On January 13, 2021, ALJ Frank conducted a hearing, and on January 14, 2021 issued Order No. 21-UI-159158, re-dismissing claimant's late request for hearing as without good cause, leaving decision # 150242 undisturbed. On January 27, 2021, claimant filed a timely application for review of Order No. 21-UI-159158 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On September 24, 2020, the Department mailed decision # 150242 to claimant's address on file with the Department. Claimant received the decision shortly after it was mailed. Decision # 150242 stated, in relevant part, "If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before October 14, 2020 to be timely." Exhibit 1.

(2) Although claimant received decision # 150242 shortly after it was mailed, he did not carefully read it until approximately October 20, 2020 because he was going through a divorce and at times supervising his children, which caused him to put the mail aside. Audio Record at 14:30 to 16:00. On October 20, 2020, claimant filed a request for hearing on decision # 150242 by email to the Department. Exhibit 3.

Claimant did not file his request for hearing by the deadline because he did not pay “close[] attention to the letter and dates when he received the decision.” Exhibit 3. Claimant did not receive a response to his October 20, 2020 request for hearing from the Department.

(3) On November 6, 2020 claimant filed a second request for hearing with the Department, which it acknowledged. Exhibit 2.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing on decision # 150242 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.

On September 24, 2020, the Department mailed decision # 150242 to claimant at his address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing was October 14, 2020. Claimant did not file his initial request for hearing until October 20, 2020 and his second request for hearing until November 6, 2020. Accordingly, both requests for hearing were late.

Claimant did not establish that factors beyond his reasonable control prevented him from filing a timely hearing request. In his response to the appellant questionnaire, claimant did not deny that he received decision # 150242 soon after it was mailed. Exhibit 3. When asked if there was anything he could have done to meet the deadline, claimant explained, “I could have paid closer attention to the letter and dates when I received the decision.” Exhibit 3. Viewed objectively, it was within claimant’s reasonable control to carefully read decision # 150242 and request a hearing by the stated deadline. At hearing, claimant candidly admitted that he did “not have a good reason” for not requesting a hearing by the deadline. Audio Record at 15:45 to 16:05.

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 because it did not, for example, raise a due process issue, and was not 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 his reasonable control or an excusable mistake prevented him from filing a hearing request by the October 14, 2020 deadline, claimant failed to establish good cause to extend the deadline to file a hearing request beyond that date. Accordingly, claimant’s late request for hearing is dismissed, leaving decision # 150242 undisturbed.

DECISION: Order No. 21-UI-159158 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: February 2, 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.

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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 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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