

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0070

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On October 23, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving benefits effective May 17, 2020 (decision # 104527). On November 12, 2020, decision # 104527 became final without claimant having filed a timely request for hearing. On November 16, 2020, claimant filed a late request for hearing on decision # 104527.

On December 10, 2020, ALJ Kangas issued Order No. 20-UI-157507, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by December 24, 2020. On December 21, 2020, claimant filed a timely response to the appellant questionnaire. On December 29, 2020, the Office of Administrative Hearings (OAH) mailed a letter to claimant advising her that Order No. 20-UI-157507 was vacated, and that a hearing would be scheduled to address the timeliness of claimant's hearing request, and if appropriate, the merits of decision # 104527. On January 15, 2021, ALJ Micheletti conducted a hearing, and on January 20, 2021 issued Order No. 21-UI-159416, dismissing claimant's request for hearing as late, without showing of good cause. On January 28, 2021, claimant filed an application for review of Order No. 21-UI-159416 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). The additional evidence is claimant's response to the appellant questionnaire, marked as EAB Exhibit 1; and claimant's written statement included with the application for review, marked as EAB Exhibit 2. A copy of these exhibits have 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.

CONCLUSIONS AND REASONS: This matter is set aside as unsupported by a complete record, and remanded to the Office of Administrative Hearings (OAH) for another hearing on whether claimant's late request for hearing on decision # 104527 should be allowed and, if so, the merits of that decision.

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.

At hearing, claimant testified that she did not receive a copy of decision # 104527 in the mail, and that she found out that she had been denied benefits only when she saw her claim status in the online claim system. Audio Record at 18:24. Claimant further testified that when she learned she had been denied benefits, she called the Department and spoke to a representative to ask how to appeal the administrative decision, but forgot to ask the representative when the decision had been issued. Audio Record at 18:27. Additionally, claimant stated on the appellant questionnaire that she filed the request for hearing late because she had been trying to upload medical documentation, apparently without success, along with the request for hearing; and that she knew there was a deadline for filing the request for hearing but did not know when the deadline was. EAB Exhibit 1 at 2. The Department's witness testified that claimant's phone call to the Department took place on November 4, 2020, and that the Department's records did not show that the representative advised claimant of the deadline to file the late request for hearing. Audio Record at 15:35, 17:32.

After claimant offered the above testimony, she disconnected from the call. Audio Record at 19:42. As a result, the ALJ was unable to ask claimant any additional questions. Claimant explained in the statement attached to the application for review that after she disconnected, she attempted to call back but was "waiting on the line." EAB Exhibit 2.

ORS 657.275 provides that EAB shall review the record of the case and promptly affirm, modify, or set aside the order of the ALJ if the Director of the Department or any interested party files a timely application for review. However, the order under review is based on an incomplete record, and a remand hearing is required. Order No. 21-UI-159416 therefore is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 104527.

DECISION: Order No. 21-UI-159416 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Alba and D. P. Hettle.

DATE of Service: February 17, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-159416 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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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