

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0074

Reversed & Remanded

PROCEDURAL HISTORY: On November 12, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving benefits effective August 11, 2020 (decision # 143703). On December 2, 2020, decision # 143703 became final without claimant having filed a timely request for hearing. On December 18, 2020, claimant filed a late request for hearing. On December 29, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for January 13, 2021 to address claimant's late request for hearing and, if appropriate, the merits of decision # 143703. On January 13, 2021, ALJ Snyder conducted a hearing, and on January 15, 2021 issued Order No. 21-UI-159259, denying claimant's request for hearing as late without good cause. On February 1, 2021 claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On November 12, 2020, the Department mailed decision # 143703 to claimant's address on file with the Department. Decision # 143703 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than December 2, 2020." Exhibit 1. Decision # 143703 also provided a mailing address, three telephone numbers and a fax number for use in contacting the Department. Exhibit 1.

(2) On an unknown date in November 2020, someone broke into claimant's mailbox. Because her mailbox was broken into, claimant did not think she received decision # 143703.

(3) On an unknown date after the Department mailed decision # 143703, claimant made a weekly certification for her unemployment insurance claim via the Department's online system and learned that her claim for unemployment insurance benefits was denied due to decision # 143703. It is unknown if claimant learned that decision # 143703 was appealable or that December 2, 2020 was the deadline to timely file a request for hearing to appeal it.

(4) On December 15, 2020, claimant spoke to a Department representative about the status of her claim. The representative advised claimant to appeal decision # 143703 if she disagreed with it.

(5) Claimant had vision problems. Because of claimant's vision problems, claimant's landlord helped claimant file the December 18, 2020 late request for hearing.

CONCLUSIONS AND REASONS: Order No. 21-UI-159259 is set aside and this matter is remanded for further development of the record.

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.

Order No. 21-UI-15929 correctly found that claimant's request for hearing, filed on December 18, 2020, was late. Order No. 21-UI-15929 at 2. The order then concluded that claimant had not shown good cause to extend the filing period to request a hearing to December 18, 2020 because "[n]o evidence was presented which demonstrated that [c]laimant was prevented from requesting a hearing by the deadline of December 2, 2020[.]" Order No. 21-UI-159259 at 3. However, the record was not sufficiently developed to support that conclusion.

It is unclear from the record if or when claimant received decision # 143703. The Department mailed decision # 143703 to claimant's address on file on November 12, 2020. Claimant initially testified that she did not think she received the decision because someone had broken into her mailbox. Audio Record at 22:26. However, claimant also testified that she filed a late appeal on December 18, 2020 "because that's what they told me to do in my letter," thus suggesting that claimant may have received a letter – possibly the administrative decision itself – containing information on how to appeal. Audio Record at 26:19 to 27:18. On remand, the ALJ should sufficiently inquire to clarify when the break-in of claimant's mailbox occurred.¹ The record should also be developed to determine whether claimant actually received a letter from the Department, and if so when it was received. If claimant received a letter, the ALJ should determine whether the letter was decision # 143703, or, if it was not, whether the letter provided sufficient information about decision # 143703 for claimant to know that it was appealable and that December 2, 2020 was the deadline to request a hearing to appeal it.

The record is also unclear whether or when claimant gained enough information from making her weekly certification to know that decision # 143703 was appealable, and that December 2, 2020 was the deadline to request a hearing to appeal it. Claimant testified that she learned her claim for unemployment insurance benefits was denied due to decision # 143703 when she used the Department's online system to make a weekly certification. Audio Record at 23:26. Claimant further testified that "I didn't know about an appeal . . . I didn't know about that until I got something in the mail and I had my landlord help me with it." Audio Record at 29:20. On remand, the record should be developed to clarify when claimant used the online system to make the weekly certification and whether doing so provided sufficient information about decision # 143703 for claimant to know that it was appealable and that December 2, 2020 was the deadline to request a hearing to appeal it. Testimony from the Department's

¹ The specific date that claimant's mailbox was broken into was not established. Claimant testified that a police report was filed regarding the incident, but it is not discernible from the audio record whether claimant stated that the police report was filed on November 6, 2020 or on November 16, 2020. Audio Record at 22:42.

representative would be helpful on this topic. Moreover, to the extent claimant's testimony that she got something in the mail was meant to convey that she received a letter from the Department relating to decision # 143703, further inquiry is required as specified in the paragraph above. Specifically, the ALJ should determine when claimant received the letter, whether the letter received was actually decision # 143703, or, if it was not, whether the letter provided sufficient information about decision # 143703 for claimant to know that it was appealable and that December 2, 2020 was the deadline to request a hearing to appeal it.

Further inquiry also is necessary to determine whether claimant's vision problems affected her ability to request a hearing by the December 2, 2020 deadline. Claimant testified that prior to December 15, 2020, she had "requested help with [her] unemployment claims because [she] can't see." Audio Record at 26:09. Claimant also testified that she has "glaucoma real bad" and needed help from her landlord to file her late appeal on December 18, 2020. Audio Record at 24:01 to 24:09. On remand, the record should be developed to determine whether, and if so how, claimant's vision problems may have affected her ability to file a timely request for hearing for decision # 143703.

Order No. 21-UI-159259 therefore is reversed and this matter remanded for another hearing on whether claimant's late request for hearing on decision # 143703 should be allowed and, if so, the merits of that decision.

DECISION: Order No. 21-UI-159259 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-159259 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

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.