

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0087

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On June 22, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective March 22, 2020 (decision # 74347). On July 13, 2020, decision # 74347 became final without claimant having filed a timely request for hearing.

On December 3, 2020, claimant filed a late request for hearing on decision # 74347. ALJ Kangas reviewed claimant's request for hearing, and on December 21, 2020 issued Order No. 20-UI-157926, dismissing the hearing 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 28, 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-157926 was cancelled and that a hearing would be scheduled to address whether claimant's late request for hearing should be allowed and, if appropriate, the merits of decision # 74347. On December 30, 2020, OAH mailed notice of a hearing scheduled for January 13, 2021. On January 13, 2021, ALJ S. Lee conducted a hearing at which the employer failed to appear, and on January 21, 2021 issued Order No. 21-UI-159534, re-dismissing claimant's request for hearing as late without good cause, leaving decision # 74347 undisturbed. On February 6, 2021, claimant filed a timely application for review of Order No. 21-UI-159534 with the Employment Appeals Board (EAB).

With the application for review, claimant filed a written argument. Claimant's written argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) On June 22, 2020, the Department mailed decision # 74347 to claimant's address on file with the Department. Decision # 74347 stated, in relevant part, "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 July 13, 2020.” Exhibit 1 at 2. Decision # 74347 also stated, “If you do not understand this decision, contact the Unemployment Insurance Center above immediately.” Exhibit 1 at 2. Decision # 74347 provided a mailing address, three telephone numbers and a fax number for use in contacting the Department. Exhibit 1 at 1.

(2) Claimant received decision # 74347 shortly after it was mailed and did not agree with it. Claimant felt wronged in being disqualified from receiving benefits based on her work separation from the employer. However, claimant did not file a request for hearing by the July 13, 2020 deadline.

(3) After decision # 74347 became final, the Department issued an administrative decision in early October, 2020 that concluded claimant was required to repay the Department for overpaid benefits. Transcript at 17. Claimant had moved to Florida in August of 2020 and had returned to Oregon on October 20, 2020. However, claimant had difficulty retrieving the mail that had been sent to her between August and December of 2020 because of an issue with the forwarding address. The issue was resolved in early December 2020. At that time, claimant learned about the overpayment decision that the Department issued on October 10, 2020 and decided to file a hearing request on decision # 74347.

(4) On December 3, 2020, claimant filed a request for hearing on decision # 74347 online with the Department. Exhibit 2.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing on decision # 74347 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. 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.

On June 22, 2020, the Department mailed decision # 74347 to claimant at her address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing was July 13, 2020. Claimant did not file her request for hearing until December 3, 2020, when claimant contacted the Department online. Accordingly, claimant’s request for hearing was late.

Claimant did not establish that factors beyond her reasonable control prevented her from filing a timely hearing request on decision # 74347. At hearing, claimant did not dispute that she received the decision shortly after the Department mailed it to her on June 22, 2020, and that she disagreed with it, and felt wronged in being disqualified from receiving benefits based on her work separation from the employer. When asked why she did not file a request for hearing on the decision until December 3, 2020, claimant stated that she did not remember, but speculated, “I think I was in shock,” “it seemed like an affirmed decision,” and that she had other personal issues to attend to. Transcript at 5–6, 12. Viewed objectively, however, it was likely within claimant’s reasonable control to carefully read decision # 74347 and request a hearing by the stated deadline despite her other personal issues.

Claimant's failure to file a timely request for hearing was more likely the result of a mistake on her part. However, 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 her reasonable control or an excusable mistake prevented her from filing a hearing request by the July 13, 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.

DECISION: Order No. 21-UI-159534 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: February 24, 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 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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