

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0161

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On December 15, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective March 29, 2020 (decision # 121001). On January 4, 2021, decision # 121001 became final without claimant having filed a timely request for hearing. On January 5, 2021, claimant filed a late request for hearing. ALJ Kangas reviewed claimant's request, and on January 14, 2021 issued Order No. 21-UI-159187, 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 28, 2021.

On February 3, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-159187 with the Employment Appeals Board (EAB). On March 8, 2021, ALJ Kangas mailed a letter to claimant stating that because claimant's response to the questionnaire was late, the Office of Administrative Hearings (OAH) would not consider it or issue another order, and that Order No. 21-UI-159187 remained in effect. This matter is before EAB based upon claimant's timely application for review of Order No. 21-UI-159187.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's response to the appellant questionnaire, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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 exhibit will remain in the record.

FINDINGS OF FACT: (1) On December 15, 2020, the Department mailed decision # 121001 to claimant's address on file with the Department. Decision # 121001 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 January 4, 2021." Exhibit 1 at 2. Decision # 121001 also stated, "Appeal Deadline Date: January 04, 2021" and "[t]he appeal period ends on January 04, 2021." Exhibit 1 at 1, 2. Decision # 121001

provided a mailing address, three telephone numbers, and a fax number for use in contacting the Department. Exhibit 1 at 1.

(2) On or around December 22 or 23, 2020, claimant received decision # 121001. On January 5, 2021, claimant requested a hearing on decision # 121001. Exhibit 2 at 2. In the request for hearing, claimant stated that they “did not receive denial letter until Dec. 22 2020” but did not include an explanation for why claimant delayed filing their request for hearing until January 5, 2021. Exhibit 2 at 2.

(3) On February 3, 2021, claimant mailed a late response to the appellant questionnaire. In the response, claimant stated that they received decision # 121001 “on or around 12-23-20” and explained that they believed they filed their appeal “within the time limit” because they “had to respond in 14 days.” EAB Exhibit 1 at 1, 2.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing on decision # 121001 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 December 15, 2020, the Department mailed decision # 121001 to claimant at claimant’s address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on that decision was January 4, 2021. Claimant did not file a request for hearing on decision # 121001 until January 5, 2021. Accordingly, claimant’s request for hearing was late.

Claimant did not establish that factors beyond their reasonable control prevented them from filing a timely hearing request on decision # 121001. Claimant acknowledged receipt of decision # 121001 on or around December 22 or 23, 2020. Exhibit 2 at 2; EAB Exhibit 1 at 1. Decision # 121001 provided a mailing address, three telephone numbers, and a fax number for use in contacting the Department. Given that claimant received decision # 121001 on or around December 22 or 23, 2020, contacting the Department via one of the methods provided to request a hearing by the January 4, 2021 deadline was within claimant’s reasonable control.

Claimant’s failure to file a timely hearing request on decision # 121001 was not the result of an excusable mistake. Claimant’s appellant questionnaire response suggests that claimant may have mistakenly believed that their January 5, 2021 late request for hearing was “within the time limit” to request a hearing because claimant erroneously thought they had “14 days” from the date they received decision # 121001 to request a hearing. EAB Exhibit 1 at 2. To the extent claimant’s failure to timely request a hearing was the result of that mistaken belief, it was not an excusable mistake because decision # 121001 notified claimant in multiple places that the deadline to timely request a hearing was January 4, 2021. Decision # 121001 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 January 4, 2021.” Exhibit 1 at 2. Decision # 121001 also stated “Appeal Deadline Date: January 04, 2021” and “The appeal period ends

on January 04, 2021.” Exhibit 1 at 1, 2. Thus, decision # 121001 communicated the January 4, 2021 deadline to claimant in clear and unambiguous terms. The record therefore does not raise a due process issue, and fails to show that claimant’s mistake was the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. For these reasons, to the 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 claimant failed to show that factors beyond their reasonable control or an excusable mistake prevented them from filing a hearing request by the January 4, 2021 deadline, claimant failed to establish good cause to extend the filing deadline for a hearing request beyond that date. Accordingly, claimant’s late request for hearing is dismissed.

DECISION: Order No. 21-UI-159187 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: March 11, 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.

NOTE: This decision denies payment of your 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.

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 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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