

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0231-R

Request for Reconsideration Granted
EAB Decision 2021-EAB-0231 Adhered to on Reconsideration
Late Request to Reopen Denied

PROCEDURAL HISTORY: On November 12, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant received retirement pay during the weeks claimed that was equal to or more than their weekly benefit amount and that claimant was therefore disqualified from receiving unemployment insurance benefits effective April 19, 2020 and until the reason for the denial had ended (decision # 141145). Claimant filed a timely request for hearing. On December 23, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for January 5, 2021 at 8:15 a.m. On January 5, 2021, claimant failed to appear for the hearing, and on January 6, 2021, ALJ Murdock issued Order No. 21-UI-158664, dismissing claimant's request for hearing for failing to appear. On January 26, 2021, Order No. 21-UI-158664 became final without claimant having filed a timely request to reopen the January 5, 2021 hearing. On January 28, 2021, claimant filed a late request to reopen the hearing. ALJ S. Lee reviewed claimant's request to reopen, and on March 18, 2021 issued Order No. 21-UI-162987, denying the request. On March 31, 2021, claimant filed an application for review of Order No. 21-UI-162987 with the Employment Appeals Board (EAB). On April 9, 2021, EAB issued EAB Decision 2021-EAB-0231, affirming Order No. 21-UI-162987. On April 15, 2021, claimant filed a request for reconsideration with EAB.

This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is granted. EAB Decision 2021-EAB-0231 is adhered to on reconsideration.

ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." "Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice." OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless

it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

Claimant filed a timely request for reconsideration within 20 days of the date EAB Decision 2021-EAB-0231 was mailed. Claimant was not required to declare that a copy of the request for reconsideration was provided to any other parties. Claimant therefore satisfied the procedural requirements for requesting reconsideration.

The EAB decision under reconsideration affirmed Order No. 21-UI-162987, which denied claimant's January 28, 2021 request to reopen the January 5, 2021 hearing as late without a showing of good cause. EAB Decision 2021-EAB-0231 at 1. Order No. 21-UI-162987 reasoned that because claimant's reopen request failed to include an explanation of why they did not file the reopen request by January 26, 2021, they failed to show that factors beyond their reasonable control or an excusable mistake caused them to fail to timely file their reopen request. Order No. 21-UI-162987 at 2.

Claimant's written statement in support of their request for reconsideration contained new information that they did not include with their request to reopen the January 5 hearing. EAB therefore will not consider claimant's new information when reconsidering its decision. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006). The new information explained that they were unaware that they were supposed to address the reason for their "tardiness" when filing their late request to reopen. Claimant's Request for Reconsideration at 1. Claimant also explained that "[due] to Covid," their mail "had been severely delayed" which played a role in their late request. Claimant's Request for Reconsideration at 1. Claimant's written statement in support of their request for reconsideration appears to be an attempt to meet the requirement, under OAR 471-040-0041(4) (February 10, 2012), that a party describe the circumstances that prevented them from filing a timely request to reopen a hearing in order to show good cause when filing a late request to reopen with OAH. Had claimant filed this written statement with their request to reopen on January 28, 2021, EAB would have been permitted to consider whether the circumstances described in their statement constituted good cause for filing the late request to reopen. Because they did not, EAB is only permitted to consider the information they provided OAH to determine whether EAB properly considered the question of whether claimant had good cause to file a late request to reopen the January 5, 2021 hearing.

Claimant's statement does not assert or show that EAB Decision 2021-EAB-0231, which affirmed Order No. 21-UI-162987 that denied their request to reopen the January 5, 2021 hearing, contained any error of material fact or law, or was inconsistent with any Department rule, officially stated Department position or prior Department practices. EAB Decision 2021-EAB-0231 therefore is adhered to on reconsideration.

DECISION: The request for reconsideration filed on April 15, 2021 is granted. EAB Decision 2021-EAB-0231 is adhered to on reconsideration.

S. Alba and D. P. Hettle.

DATE of Service: April 26, 2021

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.

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymoz.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.

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