

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0235

Affirmed
Late Request to Reopen Denied

PROCEDURAL HISTORY: On September 14, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not eligible for Pandemic Emergency Unemployment Compensation (PEUC) benefits due to claimant's potential eligibility for unemployment benefits in another state (decision # 91955). On October 5, 2020, decision # 91955 became final without claimant having filed a request for hearing. On October 13, 2020, claimant filed a late request for hearing. On October 21, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for November 10, 2020 at 10:45 a.m. to consider claimant's late request for hearing, and if allowed, the merits of decision # 91955. On November 10, 2020, claimant failed to appear for the hearing, and ALJ M. Davis issued Order No. 20-UI-156255, dismissing claimant's request for hearing for failure to appear. On November 30, 2020, Order No. 20-UI-156255 became final without claimant having filed a timely request to reopen the hearing. On January 29, 2021, claimant filed a late request to reopen the November 10, 2020 hearing. ALJ S. Lee considered claimant's request, and on March 15, 2021 issued Order No. 21-UI-162671, denying request as late without a showing of good cause. On April 2, 2021, claimant filed an application for review of Order No. 21-UI-162671 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted written arguments on April 2, 2021 and April 21, 2021. Both of claimant's arguments contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the substance of their arguments with their request to reopen on January 29, 2021. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into the record when reaching this decision. EAB considered claimant's arguments to the extent they were based on the record.

FINDINGS OF FACT: (1) On November 10, 2020, OAH mailed Order No. 20-UI-156255 to claimant's address of record with the Department. Order No. 20-UI-156255 stated, "If you did not appear at the hearing, you may request to reopen the hearing. . . . Your request to reopen the hearing must . . . either be filed within 20 days of when the order from the hearing you missed was mailed, or else show that factors or circumstances beyond your reasonable control prevented you from filing your

reopen request within that time, in which case you must also show that you filed your hearing request within seven days of when those factors or circumstances ceased to exist.” Order No. 20-UI-156255 at 2.

(2) Claimant did not understand that they were “being denied previously paid benefits” as a result of decision # 91955 until sometime after claimant failed to appear for the November 10, 2020 hearing. Exhibit 5.

CONCLUSIONS AND REASONS: Claimant’s late request to reopen is denied.

ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. The period within which a party may request reopening may be extended if the party requesting reopening has good cause for failing to request reopening within the time allowed, and acts within a reasonable time. OAR 471-040-0041(1) (February 10, 2012). “Good cause” exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant’s reasonable control. OAR 471-040-0041(2). Good cause does not include “[n]ot understanding the implications of a decision or notice when it is received.” OAR 471-040-0041(2)(b)(B). “A reasonable time,” is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(3). The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which OAH shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time. OAR 471-040-0041(4).

Claimant did not show good cause to file a late request to reopen the November 10, 2020 hearing. In their request to reopen, claimant explained, “I need to appeal. I was unaware that I was being denied previously paid benefits.” Exhibit 5. However, it is unclear from claimant’s explanation whether they did not understand they were being denied previously paid benefits by decision # 91955 until after the November 10, 2020 hearing, or until after the November 30, 2020 deadline to file a request to reopen that hearing. Regardless, not understanding the implications of decision # 91955, the Notice of Hearing for the November 10, 2020 hearing, which included the laws and rules applicable to the Pandemic Emergency Unemployment Compensation (PEUC) claimant had received, or Order No. 20-UI-156255 does not establish good cause under OAR 471-040-0041(2)(b)(B). Exhibits 3, 5. That provision specifically provides that good cause for a late request to reopen does not include “[n]ot understanding the implications of a decision or notice when it is received.” OAR 471-040-0041(2)(b)(B).

Absent a showing of good cause, claimant’s late request to reopen must be denied.

DECISION: Order No. 21-UI-162671 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: April 23, 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 your request to reopen a hearing that resulted in the denial of 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 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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