

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0243

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On December 23, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was disqualified from receiving unemployment insurance benefits effective July 26, 2020 (decision # 142706). On January 12, 2021, decision # 142706 became final without claimant having filed a timely request for hearing. On January 14, 2021, claimant filed a late request for hearing on decision # 142706.

ALJ Kangas reviewed claimant's request, and on January 27, 2021 issued Order No. 21-UI-159887, dismissing claimant's request for hearing as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 10, 2021. On February 11, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-159887 with the Employment Appeals Board (EAB). On March 29, 2021, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late, and that Order No. 21-UI-159887 remained in effect. This matter comes before EAB based upon claimant's February 11, 2021 application for review of Order No. 21-UI-159887.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is 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) In August 2020, claimant's community mailbox was vandalized. EAB Exhibit 1 at 3. Claimant asked the post office to change the locks to the mailbox. EAB Exhibit 1 at 3. The post office told claimant that it would take two to three months to change the locks due to an increase in vandalism to the mailboxes in claimant's area. EAB Exhibit 1 at 3. In "early to mid December," the post office changed the locks. EAB Exhibit 1 at 3. However, "a few days before Christmas," claimant noticed that the mailbox had been vandalized again. EAB Exhibit 1 at 3. Claimant asked the post office again to replace the lock, which it did not do until January 2021. EAB Exhibit 1 at 3.

(2) On December 23, 2020, the Department mailed decision # 142706 to claimant's address on file with the Department. Decision # 142706 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 12, 2021." Exhibit 1 at 2.

(3) Claimant did not receive decision # 142706. Claimant checked the status of her unemployment insurance benefits claim online and saw a "decision was made" and requested a hearing online "at that time." EAB Exhibit 1 at 2.

CONCLUSIONS AND REASONS: Order No. 21-UI-159887 is reversed and this matter remanded for a hearing on the merits of decision # 142706.

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. A letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(1)(q).

Claimant's request for hearing on decision # 142706 was due by January 12, 2021. Because they did not file their request for hearing until January 14, 2021, the request was late. Order No. 21-UI-159887 concluded that the record did not contain enough information to show that there was good cause for the late request for hearing, and that claimant filed the request within a reasonable time after the circumstances that prevented claimant from making a timely hearing request ended. Order No. 21-UI-159887 at 1. The record on review does not support that conclusion.

Claimant's response to the appellant questionnaire shows that claimant did not receive decision # 142706 in the mail. Decision # 142706 was mailed to claimant on December 23, 2020. However, their community mailbox was vandalized repeatedly during 2020, including "a few days" before December 25, 2020. Claimant's knowledge of repeated vandalism to their mailbox, including just prior to when decision # 142706 would have been delivered to claimant's mailbox, shows that more likely than not, claimant had mail receipt problems and did not receive decision # 142706. The weight of the evidence overcomes the legal presumption that decision # 142706 was received in the normal course of the mail. Claimant's failure to receive decision # 142706 despite its being mailed to claimant's address of record was a factor beyond their reasonable control that prevented them from filing a timely request for hearing. Claimant therefore established good cause.

The circumstances that prevented a timely filing in this case ceased to exist when claimant checked the status of the decision regarding their benefits online and saw that a “decision was made.” Claimant filed a late request for hearing “at that time.” Claimant therefore filed their late request for hearing on decision # 142706 on the same day the circumstances that prevented a timely filing ended, which was within the seven-day “reasonable time.” Because claimant established good cause and filed within a reasonable time, their late request for hearing must be allowed, and claimant is entitled to a hearing on the merits of decision # 142706.

DECISION: Order No. 21-UI-159887 is set aside, as outlined above, and a merits hearing on decision # 142706 is required.

S. Alba and D. P. Hettle.

DATE of Service: April 7, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-159887 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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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