

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0317

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On September 21, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective April 5, 2020 (decision # 154227). On October 13, 2020, decision # 154227 became final without claimant having filed a request for hearing. On November 30, 2020, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on December 21, 2020 issued Order No. 20-UI-157938, 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 4, 2021. On December 30, 2020, claimant filed a timely response to the appellant questionnaire. On January 20, 2021, the Office of Administrative Hearings (OAH) mailed a letter to claimant stating that Order No. 20-UI-157938 was vacated, and that a hearing would be scheduled to address the timeliness of claimant's hearing request and if appropriate, the merits of decision # 154227. On March 19, 2021, ALJ Scott conducted a hearing, and on March 24, 2021 issued Order No. 21-UI-163345, dismissing claimant's request for hearing as late without a showing of good cause. On April 7, 2021, claimant filed an application for review of Order No. 21-UI-163345 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) On September 21, 2020, the Department mailed decision # 154227 to claimant's address of record with the Department. The decision 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 October 13, 2020.” Exhibit 1.

(2) In September 2020, claimant evacuated her home due to wildfire in her town and surrounding area. Due to the impact of the wildfire and because she also quarantined due to COVID-19, claimant was not able to retrieve her mail until “around the 13th [of October 2020].” Audio Record at 15:52 to 16:03, Exhibit 3. Claimant put her mail into a bag where she kept it until she was able to return to her residence at “the end of October [2020].” Audio Record at 27:51.

(3) At that time, claimant read decision # 154227, including the October 13, 2020 deadline to file a request for hearing. Claimant disagreed with the decision and wanted to contest the decision, but did not request a hearing because she did not think she could appeal the decision after the October 13, 2020 deadline.

(4) On November 30, 2020, claimant applied for Pandemic Unemployment Assistance (PUA) benefits online. The Department construed claimant’s application for PUA as both an application for PUA and a late request for hearing on decision # 154227.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing on decision # 154227 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.

Claimant’s request for hearing on decision # 154227 was due by October 13, 2020. Because claimant did not file her request for hearing until November 30, 2020, the request was late. Therefore, it is necessary to determine if claimant requested the hearing within a reasonable time upon a showing of good cause to extend the hearing deadline.

Claimant’s late request for hearing on decision # 154227 must be dismissed because claimant did not file her request for hearing within a reasonable time after receiving the decision. The record shows that claimant was unable to read her mail until the end of October 2020 because she was displaced from her home due to wildfire, and was in quarantine due to COVID-19. Because these were factors beyond her reasonable control, claimant had good cause to extend the 20-day deadline to request a hearing for decision # 154227. However, under OAR 471-040-0010, the 20-day deadline may be extended only seven days after the factors that prevented a timely filing ceased to exist. Even assuming that claimant returned to her home and read her mail on October 31, 2020 (the latest date possible based on her testimony), the seven-day “reasonable time” period would have ended on November 7, 2020. Because claimant filed her request for hearing on November 30, 2020, she did not file it within a reasonable time after the factors beyond her control ceased to exist.

Claimant did not request a hearing before November 30, 2020 because she assumed she could not request a hearing once the deadline to file a timely hearing request had passed. Although claimant's failure to request a hearing was the result of a mistaken assumption on claimant's part, 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.

For those reasons, claimant failed to show good cause for her late request for hearing on decision # 154227, and the request therefore is dismissed.

DECISION: Order No. 21-UI-163345 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: April 30, 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 dismisses your late request for hearing on a decision denying payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for 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 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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