

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0338

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On February 3, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA effective February 2, 2020. On February 23, 2021, the February 3, 2021 administrative decision became final without claimant having filed a request for hearing. On February 26, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on March 23, 2021 issued Order No. 21-UI-163245, 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 April 6, 2021. On April 9, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-163245 with the Employment Appeals Board (EAB). On April 27, 2021, ALJ Kangas mailed a letter 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 Order No. 21-UI-163245 remained in effect. This matter is before EAB based upon claimant's timely application for review of Order No. 21-UI-163245.

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 February 3, 2021, the Department mailed the February 3, 2021 administrative decision to claimant's address on file 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 by February 23, 2021." Exhibit 1 at 2.

(2) Claimant did not receive the February 3, 2021 administrative decision in their mail.

(3) On February 26, 2021, claimant discovered the administrative decision at her front door and concluded that a neighbor had received it and delayed in putting it at claimant's front door. EAB Exhibit 1 at 2. That same day, claimant filed a request for hearing online on the February 3, 2021 administrative decision.

CONCLUSIONS AND REASONS: Order No. 21-UI-163245 is reversed and this matter remanded for a hearing on the merits of the February 3, 2021 administrative decision.

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. There is a legal presumption that 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 the February 3, 2021 administrative decision was due by February 23, 2021. Because they did not file their request for hearing until February 26, 2021, the request was late. Order No. 21-UI-163245 concluded that the record did not contain enough information to show that there was good cause for the late request for hearing, or 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-163245 at 1. The record on review does not support that conclusion.

Claimant's states in their response to the appellant questionnaire that they did not receive the February 23, 2021 administrative decision in the mail. EAB Exhibit 1 at 2. Although the decision was mailed to claimant on February 3, 2021, claimant first discovered the administrative decision at their front door on February 26, 2021 and concluded that a neighbor had mistakenly received the decision in the mail and did not give the decision to claimant until February 26, 2021. The weight of the evidence overcomes the legal presumption that claimant received the February 3, 2021 administrative decision in the regular course of the mail. Claimant's failure to receive that decision 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 for their late request for hearing.

The circumstances that prevented a timely filing in this case ceased to exist when claimant received the February 3, 2021 at their front door on February 26, 2021. Claimant filed their late request for hearing on the same day, which was within seven days after the February 23, 2021 deadline. Claimant therefore filed their late request for hearing within a reasonable time after the circumstances that prevented claimant from making a timely hearing request ended.

Because claimant established good cause for their late request for hearing and filed it within a reasonable time, their late request for hearing is allowed. Claimant is entitled to a hearing on the merits of the February 3, 2021 administrative decision.

DECISION: Order No. 21-UI-163245 is set aside, and this matter remanded for a hearing on the merits of the February 3, 2021 administrative decision.

S. Alba and D. Hettle;
Angela Steger-Bentz, not participating.

DATE of Service: May 13, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-163245 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 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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