

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0418

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On January 11, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer with good cause due to a COVID-19 related situation and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 101543). Also on January 11, 2021, the Department served notice of an administrative decision concluding that claimant was not able to work, available for work, or actively seeking work, but that the restrictions regarding those requirements were due to a COVID-19 related situation, and claimant therefore was eligible to receive benefits from March 29, 2020 through January 2, 2021 (decision # 104502). On February 1, 2021, both administrative decisions became final without the employer having filed a request for hearing. On February 3, 2021, the employer filed late requests for hearing on both administrative decisions.

On February 23, 2021, ALJ Kangas issued Order No. 21-UI-161469, dismissing the employer's request for hearing on decision # 101543 as late, subject to the employer's right to renew the request by responding to an appellant questionnaire by March 9, 2021. On February 24, 2021, ALJ Kangas issued Order No. 21-UI-161493, dismissing the employer's request for hearing on decision # 104502 as late, subject to the employer's right to renew the request by responding to an appellant questionnaire by March 10, 2021. On March 9, 2021, the employer submitted a timely appellant questionnaire response. On March 30, 2021, the Office of Administrative Hearings (OAH) mailed notice that Order No. 21-UI-161469 was vacated and that a hearing would be scheduled to consider the employer's late request for hearing and, if granted, the merits of decision # 101543. Also on March 30, 2021, OAH mailed notice advising that Order No. 21-UI-161493 was vacated and that a hearing would be scheduled to consider the employer's late request for hearing and, if granted, the merits of decision # 104502. On April 20, 2021, OAH mailed notice of a consolidated hearing scheduled for May 14, 2021 to consider the employer's late requests for hearing and, if granted, the merits of decisions # 101543 and # 104502.

On May 14, 2021, ALJ Wyatt conducted the consolidated hearing, and on May 21, 2021 issued Order No. 21-UI-167293 dismissing the employer's late request for hearing on decision # 101543 as late without good cause, and Order No. 21-UI-167290 dismissing the employer's late request for hearing on decision # 104502 as late without good cause. On May 27, 2021, the employer filed applications for

review of Orders No. 21-UI-167293 and Order No. 21-UI-167290 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-167293 and 21-UI-167290. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 21-EAB-0417 and 21-EAB-0418).

FINDINGS OF FACT: (1) In late November 2020, the employer was purchased by a new owner, which caused the employer's office to not run smoothly for a period of time after the purchase.

(2) On January 11, 2021, the Department mailed decision # 101543 to the employer at their address of record with the Department. Decision # 101543 stated that a request for hearing on the decision must be filed no later than February 1, 2021 to be timely. Also on January 11, 2021, the Department mailed decision # 104502 to the employer at their address of record with the Department. Decision # 104502 stated that a request for hearing on the decision must be filed no later than February 1, 2021 to be timely.

(3) On January 28, 2021, the employer received decisions # 101543 and # 104502. The employer did not file hearing requests on the decisions on January 28, 2021. The employer's office was closed from Friday January 29, 2021 through Sunday January 31, 2021. The employer's office was open on Monday February 1, 2021, but the employer did not file requests for hearings that day.

(4) On February 3, 2021, after the deadline to timely file requests for hearings had passed, the employer filed requests for hearings on decisions # 101543 and # 104502 by fax.

CONCLUSIONS AND REASONS: The employer's late requests for hearings on decisions # 101543 and # 104502 are 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.

The Department mailed decisions # 101543 and # 104502 to the employer's address of record on January 11, 2021. The employer received the administrative decisions on January 28, 2021. The deadline for the employer to file timely requests for hearing on the decisions was February 1, 2021. The employer did not file requests for hearing on the decisions until February 3, 2021. Accordingly, the employer's hearing requests were late.

The employer did not show that factors beyond its reasonable control prevented it from filing timely hearing requests by February 1, 2021. At hearing, the employer testified that "[they] did not feel [they] were given enough time" to file their hearing requests because the decisions were received on January 28, 2021, which was only a few days before the February 1, 2021 deadline. Transcript at 7. The small window of time to file requests for hearings presented practical difficulties for the employer. Nevertheless, while the employer's window to file hearing requests was small given receipt of the

decisions on January 28, 2021, the record does not support that a circumstance beyond the employer's reasonable control prevented them from filing timely hearing requests. The employer filed their late hearing requests by fax on February 3, 2021, and could have filed requests for hearings by fax on January 28, 29, 30, 31, or February 1, 2021, in which case the requests for hearing would have been timely. While the employer's office was closed on the Friday and weekend period of January 29 through 31, 2021, it is not evident that an office closure on a Friday or weekend prevented it from filing a request for hearing. In any event, the employer's office was open on Thursday January 28, 2021 and Monday February 1, 2021 but the employer did not fax hearing requests on those days.

The employer also failed to show that an excusable mistake prevented it from filing timely hearing requests. At hearing, the employer testified that the late November 2020 purchase of the employer by a new owner had caused "[c]haos in the office as we're trying to put out a thousand different fires in a thousand different directions." Transcript at 11. The employer argued that, in light of the "chaos," they "responded . . . quickly enough to be considered for a . . . late hearing[.]" Transcript at 11. The employer did not allege at hearing that any such office "chaos" rendered them unable to understand and follow the directions on the administrative decisions that required requests for hearings to be filed by February 1, 2021 to be timely. Thus, to the extent the employer's failure to file requests for hearing by the February 1, 2021 deadline was a mistake, the record fails to show that it was an "excusable mistake" within the meaning of the administrative rules because it does 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.

Because the employer failed to show that factors beyond their reasonable control or an excusable mistake prevented them from filing hearing requests by the February 1, 2021 deadline, they failed to establish good cause to extend the filing deadline beyond February 1, 2021. Accordingly, their late requests for hearing are dismissed, leaving decisions # 101543 and # 104502 undisturbed.

DECISION: Orders No. 21-UI-167293 and 21-UI-167290 are affirmed.

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

DATE of Service: June 21, 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.

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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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