

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0419

Reversed & Remanded

PROCEDURAL HISTORY: On November 23, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective March 8, 2020 (decision # 82833). On December 14, 2020, decision # 82833 became final without claimant having filed a request for hearing. On March 17, 2021, claimant filed a late request for hearing. On April 14, 2021, ALJ Kangas issued Order No. 21-UI-164819, dismissing claimant's request 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 April 28, 2021. On May 4, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-164819 with the Employment Appeals Board (EAB). On May 17, 2021, ALJ Kangas mailed a letter to claimant stating that because claimant's response was late, the Office of Administrative Hearings (OAH) would not consider the response or issue another order regarding the matter, and Order No. 21-UI-164819 remained in effect. This matter comes before EAB based upon claimant's May 4, 2021 application for review of Order No. 21-UI-164819.

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.

WRITTEN ARGUMENT: EAB did not consider the written argument claimant submitted with EAB Exhibit 1 when reaching this decision because they did not include a statement declaring that they provided a copy of the argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

The parties may offer new information such as written argument not considered by EAB into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

CONCLUSIONS AND REASONS: Order No. 21-UI-164819 is set aside and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 82833 should be allowed and, if so, the merits of that 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.

The deadline to file a timely request for hearing on decision # 82833 was December 14, 2020. Claimant filed their request for hearing on March 17, 2021. Therefore, the request for hearing was late.

However, the record under review indicates that claimant may have had good cause to file their request for hearing late because claimant did not receive decision # 82833 in the mail. In their response to the appellant questionnaire, claimant stated that "I'm not saying an admin. decision wasn't mailed on November 23, 2020 but I'm not in receipt of such mailing to refer back to." EAB Exhibit 1 at 2. Claimant also stated that they did not request a hearing before March 17, 2021 because they were "unaware there was legitimate opposition to [their] unemployment claim." EAB Exhibit 1 at 1. Claimant did not contact the Department because they thought their unemployment had "ended." EAB Exhibit 1 at 5.

The fact that claimant did not receive the decision in the mail may have constituted a factor beyond claimant's reasonable control that prevented claimant from filing a request for hearing by the December 14, 2020 deadline. However, the record is insufficient to determine whether or not it was beyond claimant's reasonable control to have received decision # 82833, or whether the failure to receive it was due to an excusable mistake. Further, to the extent that claimant's non-receipt of decision # 82833 in the mail constituted a factor beyond claimant's reasonable control, or was due to an excusable mistake, the record is insufficient to determine whether claimant's March 17, 2021 late request for hearing was filed within a reasonable time, that is, within seven days after the circumstances that prevented a timely filing ceased to exist. Claimant asserted that they "haven't knowingly written or requested a hearing or appeal." EAB Exhibit 1 at 2. The record must be developed to show when claimant became aware of decision # 82833, how much time elapsed until claimant filed a hearing request on decision # 82833, and why claimant did not file a hearing request before that time.

Because further development of the record is necessary for a determination of whether claimant filed a late request for hearing that should be allowed, this matter is remanded for a hearing and order. If the

ALJ concludes that claimant filed a request for hearing that should be allowed, the ALJ must then develop a record and issue an order on the merits of decision # 82833.

DECISION: Order No. 21-UI-164819 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 8, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-164819 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

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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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