

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0436

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On December 17, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the week of December 6, 2020 through December 12, 2020 (week 50-20) and therefore ineligible to receive unemployment insurance benefits during that week and until the reason for the denial had ended (decision # 84119). On January 6, 2021, decision # 84119 became final without claimant having filed a request for hearing. On February 22, 2021, claimant filed a late request for hearing on decision # 84119. ALJ Kangas considered claimant's request, and on March 1, 2021 issued Order No. 21-UI-161836, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 15, 2021. On March 9, 2021, claimant filed a timely response to the appellant questionnaire. On April 19, 2021, the Office of Administrative Hearings (OAH) served a letter on the parties notifying them that Order No. 21-UI-161836 was vacated, and that a hearing would be scheduled to determine whether claimant had good cause to file a late request for hearing on decision # 84119 and, if so, the merits of that decision. On May 12, 2021, ALJ Meerdink conducted a hearing, and on May 13, 2021 issued Order No. 21-UI-166678, re-dismissing claimant's request for hearing on decision # 84119 as late without a showing of good cause. On May 28, 2021, claimant filed a timely application for review of Order No. 21-UI-166678 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 17, 2020, the Department mailed decision # 84119 to claimant's address on file with the Department. Decision # 84119 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 6, 2021." Exhibit 1 at 2.

(2) Claimant received decision # 84119 in the mail one or two days prior to the timely appeal deadline of January 6, 2021. Transcript at 10. Enclosed with decision # 84119 was information on how to appeal the decision. Instead of following those instructions, claimant contacted Senator Ron Wyden's office and requested assistance in contacting the Department. Exhibit 3 at 1. When that failed to yield results,

claimant contacted the Department herself on multiple occasions until she was eventually advised to “call the hearing people.” Transcript at 16. Claimant did so, and ultimately filed her request for hearing via telephone on February 22, 2021.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing 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.

On December 17, 2020, the Department mailed decision # 84119 to claimant at claimant’s address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on that decision was January 6, 2021. Claimant did not file her request for hearing on decision # 84119 until February 22, 2021. Accordingly, claimant’s request for hearing was late.

The record does not show that factors beyond claimant’s reasonable control prevented her from filing a timely hearing request. At hearing, claimant testified that while she had received decision # 84119 in the mail prior to January 6, 2021, she did not file by mail a timely request for hearing on the decision because she had mailed a request for hearing on another administrative decision issued in August 2020,¹ the Department never responded to her request, and she consequently “kind of lost hope” and thought that the Department would fail to respond again. Transcript at 13. She further testified that she did not file her request for hearing online by the timely filing deadline because her mother and sister had attempted to contact the Department online regarding their own claims, but did not receive responses from the Department. Transcript at 15. Claimant offered similar explanations on her response to the appellant questionnaire and elsewhere in her testimony. Exhibit 3 at 1, 3; Transcript at 11. The Department’s witness also testified that administrative decisions such as decision # 84119 are typically served with “stuffers” which explain appeal rights to the parties. Transcript at 8. Claimant testified that she recalled receiving that information with both the August 2020 administrative decision and decision # 84119. Instead of following the appeal instructions enclosed with decision # 84119, claimant tried multiple other avenues for contacting the Department, including the office of a US Senator, before ultimately filing her late request for hearing via telephone. In short, while claimant received decision # 84119 with sufficient time to submit a timely request for hearing, she did not do so because she was concerned that doing so would be futile. However, claimant was aware that there were multiple ways to file a timely appeal and failed to show it was beyond her reasonable control to utilize one of those options before the deadline expired.

Similarly, although claimant’s concern about the futility of filing the request for hearing according to the instructions provided with the administrative decision was likely the result of a mistake on her part, it

¹ Transcript at 18; Exhibit 4 at 9. While the matter at issue in the August 2020 administrative decision is not at issue here, EAB has forwarded claimant’s correspondence dated September 13, 2020 to the Department for consideration as a possible request for hearing. Claimant may also wish to contact the Department to confirm that they received the September 13, 2020 letter and referred it to OAH.

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.

Because claimant failed to show that factors beyond her reasonable control or an excusable mistake prevented her from filing a hearing request by the January 6, 2021 deadline, claimant failed to establish good cause to extend the filing deadline for a hearing request beyond that date. Accordingly, claimant’s late request for hearing is dismissed.

DECISION: Order No. 21-UI-166678 is affirmed.

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

DATE of Service: June 22, 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 denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (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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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.