

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0437

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On March 5, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct and claimant was disqualified from receiving unemployment insurance benefits effective October 4, 2020 (decision # 104723). On March 25, 2021, decision # 104723 became final without claimant having filed a timely request for hearing. On March 28, 2021, claimant filed a late request for hearing. On April 22, 2021, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for May 10, 2021 to consider whether claimant's late request for hearing should be allowed and if so, the merits of decision # 104723. On May 10, 2021, ALJ Amesbury conducted a hearing at which the employer failed to appear and issued Order No. 21-UI-166470, dismissing claimant's request for hearing as late without a showing of good cause and leaving decision # 104723 undisturbed. On June 1, 2021, claimant filed a timely application for review of Order No. 21-UI-166470 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant asserted that the hearing proceedings were unfair because the ALJ "confused" a witness by a line of questioning and did not give her a chance to respond to the witness's testimony. Written Argument at 1. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004). EAB otherwise 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 March 5, 2021, the Department mailed decision # 104723 to claimant's address on file with the Department. Decision # 104723 stated, in relevant part, "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 March 25, 2021." Exhibit 1 at 2. Decision # 104723 provided a mailing address, telephone numbers, and a fax number for use to contact the Department. Exhibit 1 at 1.

(2) On March 9, 2021, claimant received decision # 104723 in the mail and reviewed it on March 15, 2021. When claimant reviewed decision # 104723 she disagreed with it and decided to appeal the decision.

(3) Claimant experienced a medical condition for which she had surgery in March 2021.

(4) Claimant delayed in filing her appeal because after she received and reviewed decision #104723 she spent time gathering evidence in the form of text messages that she wanted to include as evidence in contesting her discharge from employment. Claimant had trouble retrieving the text messages in question from her cell phone due to connectivity issues. However, claimant also had a working cell phone that she could have used to file her appeal of decision # 104723, but she would not have been able to include the text messages in question if she had filed her appeal of the decision before March 28, 2021.

(5) On March 28, 2021, claimant resolved the connectivity issues with her old phone, sent the text messages to her new phone, and on that date, filed her appeal of decision # 104723, using the Department's online claim filing system, and included the text messages she had retrieved from her old phone as exhibits.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 104723 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 March 5, 2021, the Department mailed decision # 104723 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 March 25, 2021. Claimant did not file a request for hearing on decision # 104723 until March 28, 2021. Accordingly, claimant's request for hearing was late.

Claimant did not establish that factors beyond her reasonable control prevented her from filing a timely hearing request on decision # 104723. Although claimant experienced a medical condition for which she had surgery in March 2021, the record does not show that her medical condition and surgery were such that it was beyond her reasonable control to file her appeal of decision # 104723 before the March 25, 2021 deadline. Although claimant explained "I did not wanna file [the appeal] without having my – my text messages prepared" she did not dispute that she could have filed her appeal without the text messages. Transcript at 9. She did not do so because she was unaware "how the system works." Transcript at 11. However, decision # 104723 included a mailing address, telephone numbers, and a fax number for use in contacting the Department for answers to any questions she may have had, and claimant could have used the contact information to verify that submitting the text messages with her hearing request was not required. Accordingly, filing a request for hearing on decision # 104723 by or before March 25, 2021 remained within claimant's reasonable control.

To any extent claimant's failure to file a timely hearing request was the result of a mistake on claimant's part, it was not an "excusable mistake" within the meaning of the administrative rules. The record does not, for example, raise a due process issue, and fails to show that any mistake was 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 March 25, 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-166470 is affirmed.

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

DATE of Service: June 28, 2021

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.

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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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