

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0442

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On January 5, 2021, 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 benefits effective November 15, 2020 (decision # 122503). On January 25, 2021, decision # 122503 became final without claimant having filed a request for hearing. On April 26, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on May 13, 2021 issued Order No. 21-UI-166782, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 27, 2021. On June 1, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-166782 with the Employment Appeals Board (EAB). On June 2, 2021, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late. This matter comes before EAB based upon claimant's June 1, 2021 application for review of Order No. 21-UI-166782.

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, 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.

CONCLUSIONS AND REASONS: Order No. 21-UI-166782 is set aside and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 122503 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. Under OAR 471-040-0005(2), a request for hearing on a decision relating to “the payment or amount of unemployment insurance benefits” may, in pertinent part, be filed “[b]y mail, fax, e-mail . . . or [i]n person at any publicly accessible Employment Department office in Oregon.”

Claimant’s request for hearing on decision # 122503 was due by January 25, 2021. Because they did not file their request for hearing until April 26, 2021, the request was late. Claimant stated in their appellant questionnaire response that they received decision # 122503 on January 5, 2021 and “wanted to appeal the denial decision” but “called various numbers for assistance” and was “unable to speak to anyone for assistance. The phone numbers was never answered.” EAB Exhibit 1 at 2. Claimant also stated that they “Research[ed] the website . . . [but] was unable to get any help from Oregon Employment Department to assist me with filing.” EAB Exhibit 1 at 1. Claimant indicated that they filed their late request when they did because “I was able to have family help to learn about filing online.” EAB Exhibit 1 at 2.

Claimant’s statements suggest that claimant attempted to request a hearing by telephone and possibly via the Department’s website but was unable to reach a Department representative by telephone or use the website to request a hearing until April 26, 2021, when claimant filed a late request for hearing online. Claimant’s statements provide no information as to whether claimant attempted to file a hearing request by mail, fax, email or in-person, which are the other filing methods listed under OAR 471-040-0005(2). To the extent claimant did not pursue using these other methods to file a hearing request, claimant’s statements also do not explain why they did not do so.

Further inquiry is needed to determine whether claimant’s failure to file a timely request for hearing was due to a factor beyond claimant’s reasonable control or an excusable mistake. On remand, inquiry should be made as to whether claimant attempted to file a hearing request using the methods of mail, fax, email, or in-person, and if not, why they did not pursue using these methods. Inquiry should also be made to better understand the nature and circumstances of claimant’s difficulties filing by telephone and via the Department’s website and how precisely those circumstance changed such that they were able to file their hearing request on the date that they did, April 26, 2021. To the extent the record on remand shows that claimant’s failure to file a timely request for hearing was due to a factor beyond claimant’s reasonable control or an excusable mistake, inquiry should be made to determine whether, per OAR 471-040-0010(3), by filing the request for hearing on April 26, 2021, claimant filed their request within a “reasonable time” after the factors beyond claimant’s reasonable control or leading to the excusable mistake ceased to exist.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant had good cause to file a late request for hearing, Order No. 21-UI-166782 is reversed, and this matter is remanded for a hearing on whether claimant’s late request for hearing should be allowed and, if so, the merits of decision # 122503.

DECISION: Order No. 21-UI-166782 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 25, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-166782 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

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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