

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0470

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On December 28, 2020, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA effective February 2, 2020. On January 19, 2021, the December 28, 2020 administrative decision became final without claimant having filed a request for hearing. On April 5, 2021, claimant filed a late request for hearing. On May 4, 2021, ALJ Kangas issued order No. 21-UI-166090, 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 18, 2021.

On May 22, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-166090 with the Employment Appeals Board (EAB). On June 10, 2021, ALJ Kangas mailed a letter to claimant stating that because claimant's response to the questionnaire was late, the office of Administrative Hearings (OAH) would not consider it or issue another order, and that Order No. 21-UI-166090 remained in effect. This matter is before EAB based upon claimant's timely application for review of Order No. 20-UI-158347.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of 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.

FINDINGS OF FACT: (1) On December 28, 2020, the Department mailed the December 28, 2020 administrative decision to claimant's address on file with the Department. The December 28, 2020 administrative decision stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by January 19, 2021." Exhibit 1 at 2. The December 28, 2020 administrative decision also provided a P.O. box address and a fax number for use in contacting the Department. Exhibit 1 at 1.

(2) Claimant received the December 28, 2020 administrative decision at some point after it was mailed.

(3) On April 5, 2020, claimant filed a request for hearing on the December 28, 2020 administrative decision. Exhibit 2 at 4.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 91344 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 28, 2020, the Department mailed the December 28, 2020 administrative decision 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 19, 2021. Claimant did not file a request for hearing on the December 28, 2020 administrative decision until April 5, 2021. Accordingly, claimant's request for hearing was late.

In their appellant questionnaire response, claimant stated they did not request a hearing before the January 19, 2021 deadline because "my daughter had Covid-19 I was concerned about her[.]" EAB Exhibit 1 at 3. Claimant asserted there was not anything they could have done to meet the deadline because "I have been falling down alot and am going to have back surgery. Ive been in alot of pain." EAB Exhibit 1 at 3. Claimant further stated they were prompted to file the hearing request on the day they did because "they kept mailing things to me and it just got ahead of me." EAB Exhibit 1 at 3. This evidence is not sufficient to establish good cause for claimant's late request for hearing.

Claimant did not establish that factors beyond their reasonable control prevented them from filing a timely hearing request. The exact date on which claimant received the administrative decision is unknown. However, claimant did not dispute receiving the decision or otherwise rebut the presumption that it was received in the regular course of the mail. OAR 137-003-0520(10) (January 31, 2012) ("Documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary."); *see also* ORS 40.135(1)(q). The December 28, 2020 administrative decision informed claimant that they had a right to appeal the decision if they did not believe it was correct, and that January 19, 2021 was the deadline for doing so. Although claimant was experiencing back pain and had a daughter with a serious medical condition, claimant did not show that these circumstances prevented them from filing a timely request for hearing. Given that claimant stated that filing their hearing request "just got ahead of" them because of the volume of mail they received from the Department, the questionnaire response supports the inference that claimant received the administrative decision with sufficient time to request an appeal, notwithstanding claimant's back issues and daughter's COVID-19 diagnosis. EAB Exhibit 1 at 3.

To any extent that claimant's failure to file a timely hearing request was the result of a mistake on claimant's part, claimant did not show that the mistake was 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 their reasonable control or an excusable mistake prevented them from filing a hearing request on the December 28, 2020 administrative decision by the January 19, 2021 deadline, claimant failed to establish good cause to extend the filing deadline beyond that date. Accordingly, claimant's late request for hearing is dismissed.

DECISION: Order No. 21-UI-166090 is affirmed.

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

DATE of Service: June 18, 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 الإستئناف 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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