

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0542

Affirmed
Late Request to Reopen Dismissed

PROCEDURAL HISTORY: On October 16, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not eligible for Pandemic Unemployment Assistance (PUA) benefits and assessing an overpayment of \$766 in PUA benefits that claimant was required to repay to the Department (decision # 140911).¹ On November 5, 2020, decision # 140911 became final without claimant having filed a request for hearing. On December 24, 2020, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on January 26, 2021 issued Order No. 21-UI-159786 dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 9, 2021. On February 2, 2021, claimant filed a timely response to the appellant questionnaire. On March 8, 2021, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 21-UI-159786 was vacated and that a hearing would be scheduled to address whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 140911.

Also on March 8, 2021, OAH mailed notice of a hearing scheduled for March 25, 2021 at 10:45 a.m. On March 25, 2021, claimant failed to appear at the hearing, and ALJ Monroe issued Order No. 21-UI-163516, dismissing claimant's request for hearing for failure to appear. On April 14, 2021, Order No. 21-UI-163516 became final without claimant having filed a request to reopen the March 25, 2021 hearing, or an application for review of Order No. 21-UI-163516 with the Employment Appeals Board (EAB). On April 20, 2021, claimant filed a late request to reopen the March 25, 2021 hearing. ALJ S. Lee considered claimant's request, and on June 16, 2021 issued Order No. 21-UI-168803, denying the request, leaving Order No. 21-UI-163516² undisturbed. On July 2, 2021, claimant filed an application for review of Order No. 21-UI-168803 with EAB.

¹ Although decision # 140911 stated that claimant was overpaid \$766, the decision's findings of fact and attached "Schedule of Adjustments" showed that the overpayment was \$817.

² Order No. 21-UI-168803, the order under review, stated that it left Order No. 21-UI-159786 undisturbed. However, OAH vacated Order No. 21-UI-159786 on March 8, 2021. Order No. 21-UI-168803 left Order No. 21-UI-163516, not Order No. 21-UI-159786, undisturbed. Order No. 21-UI-168803 also mistakenly considered Order No. 21-UI-159786 as Exhibit 4. However, because Order No. 21-UI-159786 was vacated by OAH on March 8, 2021, the relevant order was Order No. 21-UI-

FINDING OF FACT: (1) On March 25, 2021, OAH mailed Order No. 21-UI-163516 to claimant's address of record on file with the Department. Order No. 21-UI-163516 stated, in relevant part, "If you did not appear at the hearing, you may request to reopen the hearing. . . . Your request to reopen the hearing must . . . either be filed within 20 days of when the order from the hearing you missed was mailed, or else show that factors or circumstances beyond your reasonable control prevented you from filing your reopen request within that time, in which case you must also show that you filed your hearing request within seven days of when those factors or circumstances ceased to exist." Order No. 21-UI-163516 at 2.

CONCLUSIONS AND REASONS: Claimant's late request to reopen is dismissed.

ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. The period within which a party may request reopening may be extended if the party requesting reopening has good cause for failing to request reopening within the time allowed, and acts within a reasonable time. OAR 471-040-0041(1) (February 10, 2012). "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control. OAR 471-040-0041(2). "A reasonable time," is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(3). The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which OAH shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time. OAR 471-040-0041(4).

Order No. 21-UI-168803 concluded that claimant's request to reopen the March 25, 2021 hearing must be denied because it did not show good cause for claimant's failure to appear at the March 25, 2021 hearing. Order No. 21-UI-168803 at 2. However, claimant's request to reopen must be dismissed because it was filed late and does not show that claimant had good cause for failing to request reopening within the time allowed.

Because claimant filed their request to reopen on April 20, 2021, more than twenty days after Order No. 21-UI-163516 was mailed, the request to reopen was late. In their request to reopen, claimant did not show good cause for their late reopen request. Claimant provided a written statement that stated that they missed a hearing because they "misplaced [their] papers," but did not state why they filed the request to reopen the hearing late. Exhibit 5 at 4. Therefore, because claimant did not explain why the request was late, claimant did not show that it was beyond their reasonable control to read the information contained in Order No. 21-UI-163516 about their right to request to reopen the hearing and follow the instructions contained therein to file a timely request to reopen the March 25, 2021 hearing. And absent an explanation for why the request to reopen was late, we cannot find that it was an "excusable mistake" within the meaning of the administrative rules.

Because claimant did not show that it was beyond their reasonable control to timely file their request to reopen or that their failure to do so was the result of an excusable mistake, claimant did not establish

163516, because that was the order which dismissed claimant's request for hearing for their failure to appear on March 25, 2021. Order No. 21-UI-163516 was included in Exhibit 5.

good cause for their late request to reopen the March 25, 2021 hearing. Absent such a showing, claimant's late request to reopen is dismissed.

DECISION: Order No. 21-UI-168803 is affirmed.

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

DATE of Service: July 27, 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 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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