

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0554

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On March 19, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was paid unemployment insurance benefits to which they were not entitled and assessing an overpayment of \$820 in regular unemployment insurance benefits and \$1,200 in Federal Pandemic Unemployment Compensation benefits (FPUC) (decision # 104753). On April 8, 2021, decision # 104753 became final without claimant having filed a request for hearing. On May 5, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on May 25, 2021, issued order No. 21-UI-167472, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by June 8, 2021.

On June 14, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-167472 with the Employment Appeals Board (EAB). On July 9, 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-167472 remained in effect. This matter is before EAB based upon claimant's timely application for review of Order No. 21-UI-167472.

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 March 19, 2021, the Department mailed decision # 104753 to claimant's address on file with the Department. Decision # 104753 stated, "If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before April 8, 2021 to be timely." Exhibit 1 at 2. Decision # 104753 also provided a

mailing address, a fax number, and two telephone numbers for use in contacting the Department. Exhibit 1 at 1.

(2) On March 24, 2021, claimant received decision # 104753. EAB Exhibit 1 at 2.

(3) On or around May 5, 2021, claimant sent an email to the Department. EAB Exhibit 1 at 3. On May 5, 2021, a Department representative called claimant in response to their email and told claimant they “could still file” a request for hearing on decision # 104753. EAB Exhibit 1 at 3. On May 5, 2021, claimant filed a late request for hearing on decision # 104753.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing on decision # 104753 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 19, 2021, the Department mailed decision # 104753 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 April 8, 2021. Claimant did not file a request for hearing on decision # 104753 until May 5, 2021. Accordingly, claimant’s request for hearing was late.

Claimant received decision # 104753 on March 24, 2021, but did not file their late request for hearing until May 5, 2021. Claimant did not offer any reason in their appellant questionnaire response for failing to file a hearing before the April 8, 2021 deadline. Although Claimant states that a Department representative called them on May 5, 2021 and advised that claimant “could still file,” that, at most, explains only why claimant filed their late request for hearing on May 5, 2021. EAB Exhibit 1 at 3. It does not constitute evidence of a factor beyond claimant’s reasonable control or an excusable mistake that would establish good cause for claimant’s failure to file a request for hearing before the April 8, 2021 deadline.

Claimant did not establish that factors beyond their reasonable control prevented them from filing a timely hearing request. Decision # 104753 informed claimant that they had a right to appeal the decision if they did not believe it was correct, and that April 8, 2021 was the deadline for doing so. Claimant received decision # 104753 on March 24, 2021, which was within a sufficient amount of time to request an appeal by the April 8, 2021 deadline.

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 decision # 104753 by the April 8, 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-167472 is affirmed.

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

DATE of Service: July 14, 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 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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