

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0600

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On June 19, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective August 28, 2019 (decision # 114228). On July 9, 2020, decision # 114228 became final without claimant having filed a request for hearing. On June 2, 2021, claimant filed a late request for hearing. ALJ Kangas reviewed claimant's request, and on June 22, 2021 issued Order No. 21-UI-169187, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 6, 2021. On July 7, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-169187 with the Employment Appeals Board (EAB). On July 20, 2021, ALJ Kangas mailed a letter to claimant stating that because claimant's response to the appellant questionnaire response was late, it would not be considered, another order would not be issued, and that Order No. 21-UI-169187 therefore remained in effect. This matter comes before EAB based upon claimant's July 7, 2021 application for review of Order No. 21-UI-169187.

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, 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(s) will remain in the record.

The parties may offer new information, such as other information that shows whether claimant had good cause for filing a late request for hearing on decision # 114228, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

CONCLUSIONS AND REASONS: Order No. 21-169187 is set aside and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 114228 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.

The deadline for claimant to file a timely request for hearing on decision # 114228 was July 9, 2020. Claimant filed their request for hearing on June 2, 2021. Exhibit 2. Accordingly, their request for hearing was late.

However, claimant's response to the appellant questionnaire indicate that claimant may have had good cause to file their request for hearing late because claimant may not have received decision # 114228 in the regular course of the mail. In their questionnaire response, claimant stated that they "never received" the decision because "it was sent to the wrong address," which they learned during a call from the Department on June 2, 2021. EAB Exhibit 1 at 2. Claimant's questionnaire response also indicates that claimant filed their request for hearing by phone and online on the same day that they received the call from the Department informing them that the Department had sent the decision to the wrong address. EAB Exhibit 1 at 2.

That claimant apparently "never received" decision # 114228 in the mail may have constituted a factor beyond claimant's reasonable control or the result of an excusable mistake on their part that prevented claimant from filing a request for hearing by the July 9, 2020 deadline. However, the record is insufficient to determine why claimant may not have received the decision in the regular course of the mail. The record fails to show whether claimant ever resided at the address to which the decision was mailed, and if so, when they changed their residence address and whether they notified the Department of that residence change. If claimant never resided at that address, the record fails to show where they resided in June 2020 and when they moved to their current address. The record also fails to show whether claimant was claiming benefits in June 2020, if so, whether claimant notified the Department of their address at that time, and if not, why not.¹ The record should be developed regarding all of those issues.

In their responses to the appellant questionnaire, claimant also indicated that they were "waiting to receive the paperwork which never arrived," and that they attempted to contact the Department "many times, but no answer." EAB Exhibit 1 at 2. Inquiry is needed into why they were waiting to receive "paperwork," and to what paperwork they were referring. Inquiry is also needed into when, why, and how they attempted to contact the Department "many times," without receiving an answer.

¹ Under OAR 471-040-0010(1)(b)(A) good cause does not include failing to receive a document due to not notifying the Department or the Office of Administrative Hearings (OAH) of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal.

To the extent the record on remand shows that claimant's failure to file a timely request for hearing was due to factors beyond claimant's reasonable control or an excusable mistake, inquiry should also be made to clarify whether, by filing their request for hearing on June 2, 2021, claimant filed their request within a "reasonable time" after those factors ceased to exist.

Because further development of the record is necessary for a determination of whether claimant's late request for hearing should be allowed, and if so, the merits of decision # 114228, Order No. 21-UI-169187 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-169187 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: August 6, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-169187 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.