

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0651

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On November 27, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective May 31, 2020 (decision # 85323). On December 17, 2020, decision # 85323 became final without claimant having filed a request for hearing. On December 22, 2020, claimant filed a late request for hearing on decision # 85323. ALJ Kangas considered claimant's request, and on December 31, 2020 issued Order No. 20-UI-158418, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 14, 2021. On January 11, 2021, claimant filed a timely response to the appellant questionnaire. On February 2, 2021, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 20-UI-158418 was vacated and that a new hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # 85323. On July 16, 2021, ALJ Logan conducted a hearing, and on July 23, 2021 issued Order No. 21-UI-170962, concluding that claimant did not have good cause to file the late request for hearing and leaving decision # 85323 undisturbed. On August 12, 2021, claimant filed an application for review of Order No. 21-UI-170962 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant filed claims for benefits for the weeks of November 8 through 14, 2020 (week 46-20), November 15 through 21, 2020 (week 47-20) and November 22 through 28, 2020 (week 48-20) on November 18, 2020, November 24, 2020, and December 24, 2020, respectively.¹

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

(2) On November 26, 2020, claimant moved from Portland, Oregon to Las Vegas, Nevada. Claimant did not update his address with the Department at that time.

(3) On November 27, 2020, the Department mailed decision # 85323 to claimant's Oregon address on file with the Department. The first page of decision # 85323 stated that the appeal deadline for the decision was December 17, 2020. Exhibit 1 at 1. The first page of the decision also contained three telephone numbers, a fax number, and a mailing address for the Department, but did not contain a page number. The second page of decision # 85323 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than December 17, 2020." Exhibit 1 at 2.

(4) On December 4, 2020, claimant's former roommate, who still resided at the address to which decision # 85323 was mailed, sent claimant a picture of the first page of the decision. Claimant did not request that his former roommate send him a picture of the second page of the decision. When claimant received it, he "tried to figure out what was going on" by attempting to call the Department at the phone numbers listed on the decision. Transcript at 5. Between December 4, 2020 and December 16, 2020, claimant called the Department numerous times without success. On December 16, 2020, claimant faxed a letter to the Department at the fax number listed on the decision in which he stated that he had been attempting to get in contact with the office, that nobody had responded to him, and that he was requesting a response back. Transcript at 8. The Department did not receive the fax.

(5) On December 22, 2020, after searching the Department's website, claimant found a contact form and requested hearing on decision # 85323 using that form.

CONCLUSIONS AND REASONS: Claimant's late request for hearing is dismissed.

OAR 471-040-0005(1) (July 15, 2018) provides that, "A Request for hearing may be filed on forms provided by the Employment Department or similar offices in other states. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed."

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. OAR 471-040-0010(1)(b)(A) specifies that good cause for filing a late request for hearing does not include "failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal."

The request for hearing on decision # 85323 was due by December 17, 2020. The record shows that claimant attempted to contact the Department by fax on December 16, 2020, prior to the appeal deadline. However, claimant testified at hearing that the fax only stated that he had been unsuccessfully

attempting to contact the Department and that he would like a response. Under OAR 471-040-0005(1), the December 16, 2020 fax did not constitute a request for hearing because it neither specifically requested a hearing nor expressed an intent to appeal. *See also Kroetch v. Employment Department*, 289 Or App 291, 409 P3d 60 (2017) (submission of a statement or documentation of facts that is inconsistent with an existing determination, by itself, is not a request for hearing; the submission must include some indication that the party is aware the underlying decision exists and that the party wants to challenge it). Therefore, claimant did not file a request for hearing until December 22, 2020, which was late.

At hearing, claimant testified that he did not specifically request a hearing on the December 16, 2020 fax because he “was under a lot of stress because [he] was freaking out” to get in contact with the Department prior to the appeal deadline. Transcript at 10. However, claimant did not show that feeling stressed or anxious about meeting the deadline made him unable to contact the Department by either fax or mail and express an intent to appeal the administrative decision by the deadline. Neither did claimant explain why he waited until almost a week after the deadline had passed to search the Department’s website and request a hearing via the contact form on the site. Therefore, claimant has not shown that factors beyond his reasonable control rendered him unable to file the request for hearing by the timely filing deadline. Further, although claimant’s initial decision to rely on contacting the Department by phone in order to appeal the administrative decision was likely the result of a mistake on his part, it was not an “excusable mistake” within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

In certain circumstances, an individual’s failure to receive all or part of an administrative decision may constitute factors beyond their reasonable control. Claimant only received the first page of decision # 85323, and therefore was not explicitly advised of his appeal rights, including the portion which advised that he could appeal the decision if he did not believe it was correct. The record does not demonstrate that claimant had any reason to know that there was a second page of the decision, as the first page contained no page numbers. However, claimant did not notify the Department of his updated address at the time that he moved, and the record shows that he claimed benefits during the weeks preceding and following the issuance of decision # 85323. Therefore, even if claimant’s failure to receive the second page of the decision was the reason he did not specify that he wished to request a hearing prior to the timely filing deadline, under OAR 471-040-0010(1)(b)(A), such a reason would not constitute good cause to file the late request for hearing because he was claiming benefits at the time and did not notify the Department of his new address.

Therefore, claimant’s late request for hearing on decision # 85323 is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 21-UI-170962 is affirmed.

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

DATE of Service: September 9, 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.

NOTE: This decision denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for weeks ending September 4, 2021 and prior as long as you were not eligible for other benefits during that time, and were unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA was an unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic. The program ended on September 4, 2021.

Visit <https://unemployment.oregon.gov> for more information, or to contact the Oregon Employment Department using the “Contact Us” form. You can also call 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

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 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 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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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.