

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0653

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On May 13, 2021, 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 January 10, 2021 (decision # 151225). On June 2, 2021, decision # 151225 became final without claimant having filed a request for hearing. On June 14, 2021, claimant filed a late request for hearing. ALJ Kangas reviewed claimant's request, and on July 15, 2021, issued order No. 21-UI-170386, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 29, 2021.

On July 30, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-170386 with the Employment Appeals Board (EAB). On August 11, 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-170386 remained in effect. This matter is before EAB based upon claimant's timely application for review of Order No. 21-UI-170386.

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 May 13, 2021, the Department mailed decision # 151225 to claimant's address on file with the Department. Decision # 151225 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 June 2,

2021.” Exhibit 1 at 2. Decision # 151225 also listed a P.O. box address, three telephone numbers, and a fax number for use in the contacting the Department. Exhibit 1 at 1.

(2) On May 23, 2021, claimant received decision # 151225. EAB Exhibit 1 at 2. Claimant filed a late request for hearing on decision # 151225 on June 14, 2021.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing on decision # 151225 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 May 13, 2021, the Department mailed decision # 151225 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 June 2, 2021. Claimant did not file a request for hearing on decision # 151225 until June 14, 2021. Accordingly, claimant’s request for hearing was late.

In their appellant questionnaire response, claimant stated they received decision # 151225 on May 23, 2021. EAB Exhibit 1 at 2. However, claimant did not request a hearing by the June 2, 2021, deadline because, on an unspecified date, they “drove to San Diego to see about a job” and claimant’s “car broke down in the middle of [their] way to San Diego and [their] cell phone was not in service.” EAB Exhibit 1 at 1. 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. Claimant received the administrative decision on May 23, 2021, which was more than a week before the June 2, 2021 deadline to timely file. This presented claimant with a sufficient time to file a timely request for hearing. Claimant did not establish that their car trouble and lack of cell phone service constituted circumstances beyond their reasonable control that prevented a timely filing. This is so because claimant did not explain when they experienced the car trouble and lack of cell phone service, how long those difficulties persisted, and how precisely those difficulties affected their ability to file a hearing request by the June 2, 2021 deadline.

To the extent that claimant’s failure to file a timely hearing request was the result of a mistake, 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 # 151225 by the June 2, 2021 deadline, claimant failed to establish good cause to extend the filing deadline beyond that date. Accordingly, claimant’s late request for hearing is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 21-UI-170386 is affirmed.

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

DATE of Service: August 25, 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 the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the “Contact Us” form. You can also apply for PUA by calling 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 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

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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.