

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0735

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On March 12, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective January 17, 2021 (decision # 134856). On April 1, 2021, decision # 134856 became final without claimant having filed a request for hearing. On April 9, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on April 29, 2021 issued Order No. 21-UI-165791, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 13, 2021. On May 10, 2021, claimant filed a timely response to the appellant questionnaire. On July 29, 2021, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for August 17, 2021 to consider whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 134856. On August 17, 2021, ALJ L. Lee conducted a hearing, and on August 20, 2021 issued Order No. 21-UI-173097, dismissing claimant's request for hearing as late without good cause, leaving decision # 134856 undisturbed. On September 8, 2021, claimant filed an application for review of Order No. 21-UI-173097 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On March 12, 2021, the Department mailed decision # 134856 to claimant's address on file with the Department. Decision # 134856 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 April 1, 2021." Exhibit 1 at 2. Decision # 134856 provided a mailing address, a fax number, and three telephone numbers for use in contacting the Department. The Department's March 12, 2021 mailing also included a "hearing instructions" document, which informed claimant that she could make her request for a hearing by regular mail, fax, or by submitting a "Contact Us" form through the Department's website. Transcript at 20. The "hearing instructions" document informed the claimant that if she did not understand decision # 134856 she could call the Department at one of the telephone numbers provided on decision # 134856. Transcript at 20.

(2) On or about March 15, 2021, claimant received decision # 134856. Claimant read the decision, disagreed with the decision, and understood that she had until April 1, 2021 to timely request a hearing challenging the decision.

(3) Between March 15, 2021 and April 8, 2021, claimant made multiple unsuccessful attempts to call the Department to request a hearing. Claimant successfully reached the Department by telephone on one occasion; however, her call was disconnected before she could request a hearing. Claimant's remaining calls were unsuccessful because the telephone line was busy. Claimant did not attempt to request a hearing by regular mail, fax, or by submitting a "Contact Us" form through the Department's website. Claimant had "never faxed anything and . . . [knew] nothing about computers." Transcript at 32.

(4) On April 9, 2021, claimant requested a hearing after being referred to an individual at "a hearing place" who helped her make the request. Transcript at 8.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 134856 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.

Claimant's request for hearing on decision # 134856 was due by April 1, 2021. Because claimant did not file her request for hearing until April 9, 2021, the request was late. Therefore, it is necessary to determine if claimant requested the hearing within a reasonable time upon a showing of good cause to extend the hearing deadline.

Claimant failed to demonstrate that factors beyond her reasonable control prevented her from filing a request for hearing on or before April 1, 2021. The record shows that prior to the April 1, 2021 deadline, claimant made several unsuccessful attempts to call the Department to request a hearing. However, the preponderance of the evidence shows that it was within claimant's reasonable control during this same time period to submit her request for hearing by other means, particularly given the fact that the instructions provided to claimant with decision # 134856 expressly instructed her to request a hearing through those other means. While claimant's lack of savvy in using computers or a fax was understandable, she was unable to explain why she did not mail her hearing request using regular mail and therefore did not show that factors beyond her reasonable control prevented her from requesting a hearing by mail. Transcript at 34. As such, claimant failed to establish good cause for her late request for hearing based on the existence of factors beyond her reasonable control.

Claimant also failed to establish that her late request for hearing was the result of an excusable mistake. Although claimant's failure to file her request for hearing by regular mail was likely the result of a mistake on claimant's part, it was not an "excusable mistake" within the meaning of the administrative rules because claimant was capable of following the instructions provided with decision # 134856 to file

her request by regular mail, but she made no effort to do so. As such, claimant failed to show good cause for her late request for hearing on decision # 134856, and the request therefore is dismissed.

DECISION: Order No. 21-UI-173097 is affirmed.

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

DATE of Service: October 6, 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 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 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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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.