

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0801

Reversed & Remanded

PROCEDURAL HISTORY: On March 15, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct and that claimant was disqualified from receiving unemployment insurance benefits effective January 27, 2019 (decision # 185808). On April 5, 2021, decision # 185808 became final without claimant having filed a request for hearing. On May 14, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on June 14, 2021, issued order No. 21-UI-168683, 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 28, 2021.

On June 30, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-168683 with the Employment Appeals Board (EAB). On September 29, 2021, ALJ S. Lee 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-168683 remained in effect. This matter comes before EAB based upon claimant's timely application for review of Order No. 21-UI-168683.

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 15, 2021, the Department mailed decision # 185808 to claimant's address on file with the Department. Decision # 185808 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 5, 2021." Exhibit 1 at 2.

(2) On March 19, 2021, claimant received decision # 185808. EAB Exhibit 1 at 1. On May 14, 2021, claimant mailed a letter to the Department requesting a hearing on decision # 185808.

CONCLUSIONS AND REASONS: Order No. 21-UI-168683 is set aside and this matter is remanded for further development of the record to determine whether claimant filed a timely request for hearing on decision # 185808 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.

Claimant's request for hearing on decision # 185808 was due by April 5, 2021. Because claimant filed their May 14, 2021 request for hearing after April 5, 2021, that request for hearing was late. However, Claimant's statements in their appellant questionnaire response suggest the possibility that claimant filed requests for hearing before the hearing request they filed by mail on May 14, 2021. Specifically, in their appellant questionnaire, claimant was asked, "On what date (mm/dd/yy) did you file your hearing request (appeal)?" and responded, "I requested hearing via fax, and contact form online." EAB Exhibit 1 at 1. In response to a different question, claimant further stated, "I mailed the weekly claim denial form with handwritten note saying I request a hearing. The first week of April." EAB Exhibit 1 at 1.

This information raises the possibility that claimant may have filed a request for hearing on decision # 185808 via fax, and online and may have done so by the April 5, 2021 deadline. It is also possible that claimant could have filed a timely request for hearing if she mailed in the handwritten note stating "I request a hearing" by April 5, 2021, so long as the note specifically requested a hearing on decision # 185808 or otherwise expressed a present intent to appeal and it can be determined what issue or decision was being appealed. *See* OAR 471-040-0005(1). Because it is unclear from the record whether claimant filed timely requests for hearing prior to the April 5, 2021 deadline, this matter is remanded for further development of the record.

On remand, the ALJ should develop the record to determine whether claimant filed requests for hearing on decision # 185808 via fax and online or via a handwritten note on a weekly claim denial form. If the record on remand shows claimant filed these submissions with the Department, the ALJ should determine the precise date that claimant made the submissions by fax and the contact form online as well as the precise date that they mailed the handwritten note on the weekly claim denial form. If the record on remand shows that either of these submissions was made by April 5, 2021, the ALJ should then develop the record to determine whether, pursuant to OAR 471-040-0005(1), the submissions specifically requested a hearing on decision # 185808 or expressed a present intent to appeal and, if so, what issue or decision was being appealed. If the record on remand shows that the submissions were filed with the Department and meet the criteria for a hearing request per OAR 471-040-0005(1), but were not filed by the April 5, 2021 deadline, the ALJ should develop the record to determine whether claimant had good cause for filing them late.

Because further development of the record is necessary for a determination of whether claimant filed a timely request for hearing, this matter is remanded for a hearing and order. If the ALJ concludes that claimant filed a timely request for hearing, the ALJ must then develop a record on the merits of decision # 185808.

DECISION: Order No. 21-UI-168683 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: October 12, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-168683 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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.

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