

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0824

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On March 30, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct connected with work and claimant was disqualified from receiving unemployment insurance benefits effective February 21, 2021 (decision # 133213). On April 19, 2021, decision # 133213 became final without claimant having filed a timely request for hearing. On April 27, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on May 24, 2021 issued Order No. 21-UI-167322, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by June 7, 2021. On June 4, 2021, claimant filed a timely response to the appellant questionnaire. On August 9, 2021, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 21-UI-167322 was vacated. On September 9, 2021, OAH mailed notice of a hearing scheduled for September 24, 2021 to consider whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 133213. On September 24, 2021, ALJ Mott conducted a hearing and issued Order No. 21-UI-175597, re-dismissing claimant's request for hearing as late without good cause, leaving decision # 133213 undisturbed. On October 12, 2021, claimant filed an application for review of Order No. 21-UI-175597 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted two written arguments, one on November 8, 2021 and another on November 10, 2021. As to the November 8, 2021 written argument, claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only

information received into evidence at the hearing when reaching this decision. EAB considered claimant's November 8, 2021 argument to the extent it was based on the record.

As to claimant's November 10, 2021 written argument, because claimant's argument was not received by EAB within the time period allowed under OAR 471-041-0080(1) (May 13, 2019), the November 10, 2021 argument was not considered by EAB when reaching this decision. OAR 471-041-0080(2)(b). Claimant did not establish good cause to extend the time period allowed for submitting the November 10, 2021 written argument under OAR 471-041-0080(4).

FINDINGS OF FACT: (1) Prior to October 2020, claimant lived at [redacted]. In October 2020, claimant moved to [redacted].

(2) In March 2021, claimant filed an initial claim for unemployment insurance benefits. When claimant keyed in his mailing address into his initial claim application form, he mistakenly keyed in his address as [redacted], a mixture of his old address and current address. Shortly thereafter, the Department updated the address of record it had on file for claimant using the erroneous mailing address claimant provided on his initial claim.

(3) On March 30, 2021, the Department mailed decision # 133213 to the erroneous mailing address it had on record for claimant, [redacted]. The United States Postal Service returned the decision to the Department as undeliverable.

(4) On April 19, 2021, decision # 133213 became final without claimant having filed a request for hearing.

(5) On April 27, 2021, claimant became concerned because he had not heard or received anything from the Department about the status of his claim. Claimant called the Department that day, reached a Department representative, learned of the existence of decision # 133213, updated his mailing address to [redacted], and filed a request for hearing on decision # 133213.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 133213 is allowed. Claimant is entitled to a hearing on 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 # 133213 was due by April 19, 2021. Because claimant did not file his request for hearing until April 27, 2021, the request was late. However, claimant's late request for hearing is allowed because the record shows that claimant requested the hearing within a reasonable time upon a showing of good cause to extend the hearing deadline.

The order under review concluded that claimant did not show good cause to extend the deadline to file a request for hearing because he provided the Department with an incorrect address despite it being within his reasonable control to provide the Department with his correct updated address. Order No. 21-UI-175597 at 3. The record does not support the order under review's conclusion that claimant lacked good cause to extend the deadline to file.

Claimant showed good cause to extend the deadline to file a request for hearing on decision # 133213 because his failure to file by the April 19, 2021 deadline was due to an excusable mistake. The record shows that when claimant keyed in his address into his initial claim application form, he mistakenly typed in an erroneous mailing address that was a mixture of his old address and his current address. That mistake led the Department to update claimant's address of record with the erroneous mailing address, which, in turn, caused claimant not to receive the decision when it was mailed to the erroneous address on March 30, 2021. On this record, claimant's error was an excusable mistake because it was more likely than not the result of claimant being unable to follow directions on his initial claim application relating to keying in his mailing address accurately despite substantial efforts to comply with those directions.

The remaining issue is whether claimant filed his request for hearing within a reasonable time after the circumstances preventing a timely filing ceased to exist. The circumstances that prevented a timely filing ceased to exist on April 27, 2021, when claimant was informed of the existence of decision #133213 after speaking with a Department representative. Claimant filed his request for hearing the same day, which is less than seven days after the circumstances that prevented a timely filing ceased to exist. Claimant therefore filed his request for hearing within a reasonable time.

Claimant's late request for hearing on decision # 133213 therefore is allowed. Claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 21-UI-175597 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: November 16, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-175597 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 ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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