

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0851

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On December 17, 2020, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA benefits effective February 2, 2020. On January 6, 2021, the December 17, 2020 administrative decision became final without claimant having filed a request for hearing. On February 4, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on March 1, 2021 issued Order No. 21-UI-161840, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 15, 2021. On March 10, 2021, claimant filed a timely response to the appellant questionnaire. On April 20, 2021, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 21-UI-161840 was vacated and that a new hearing would be scheduled to determine whether claimant's late request for hearing should be allowed and, if so, the merits of the December 17, 2020 administrative decision. On September 22, 2021, ALJ Frank conducted a hearing, and on September 30, 2021 issued Order No. 21-UI-176085, re-dismissing claimant's request for hearing as late without good cause and leaving the December 17, 2020 administrative decision undisturbed. On October 20, 2021, claimant filed an application for review of Order No. 21-UI-176085 with the Employment Appeals Board (EAB).

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 argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On December 17, 2021, the Department mailed the December 17, 2020 administrative decision to claimant's address on file with the Department. The December 17, 2020 administrative decision stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by January 6, 2021." Exhibit 1 at 2.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing 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.

The request for hearing on the December 17, 2020 administrative decision was due by January 6, 2021. Because claimant did not file his request for hearing until February 4, 2021, the request was late. In his appellant questionnaire response, claimant stated that he received the December 17, 2020 administrative decision on December 19, 2020; that he filed a request for hearing on January 4, 2021 via email; that on February 3, 2021 he “received an auto-reply saying that. . . no one looks at this email address [and to send it to another email address];” and that he re-submitted his request for hearing the day after receiving the auto-reply email. Exhibit 3 at 1–2. Claimant testified similarly at hearing. However, claimant did not offer into evidence a copy of the January 4, 2021 email he allegedly sent to the Department to request the hearing, and the record otherwise does not show that claimant made any efforts to file the request for hearing prior to the January 6, 2021 deadline.

At hearing, the Department’s witness testified that the Department had updated the appeals information enclosed with administrative decisions as of October 2020, and that the methods of contact listed for filing requests for hearing included the website contact form, fax, mail, or in-person at WorkSource offices—but not an email address. Audio Record at 21:15 to 22:00. The Department’s witness also testified that, as of October 2020, the email address which had previously been available to request hearings had been set with an auto-reply to respond to appellants who attempted to file requests for hearings via email. Audio Record at 22:02 to 22:20. Based on the evidence in the record, it is therefore plausible that claimant received an auto-reply to his initial request for hearing that he submitted to the Department via email. However, without supporting evidence, claimant’s claim that the auto-reply came a month after he sent the original emailed request for hearing is implausible: auto-replies are, by their nature, typically sent automatically and nearly instantaneously in response to emails received by the email address in question. Thus, claimant failed to show that he filed a request for hearing prior to the January 6, 2021 deadline.

Because claimant did not offer further evidence to explain why he filed the request for hearing late, claimant did not show that he filed the late request for hearing due to factors beyond his control or as a result of an excusable mistake. Therefore, claimant’s late request for hearing on the December 17, 2020 administrative decision is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 21-UI-176085 is affirmed.

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

DATE of Service: November 23, 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.

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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 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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