

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0863

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On March 19, 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 April 14, 2019 (decision # 95454). On April 8, 2021, decision # 95454 became final. On April 9, 2021, claimant sent an email to the Departments' office of the director. On April 20, 2021, claimant filed a late request for hearing on decision # 95454. ALJ Kangas considered claimant's request, and on May 14, 2021 issued Order No. 21-UI-166863, 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 28, 2021. On May 27, 2021, claimant filed a timely response to the appellant questionnaire. On August 10, 2021, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 21-UI-166863 was vacated and that a new hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # 95454. On September 28, 2021, ALJ Smith conducted a hearing, and on October 5, 2021 issued Order No. 21-UI-176440, re-dismissing claimant's request for hearing as late without a showing of good cause, and leaving decision # 95454 undisturbed. On October 23, 2021, claimant filed an application for review of Order No. 21-UI-176440 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 her 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 March 19, 2021, the Department mailed decision # 95454 to claimant's address on file with the Department. Decision # 95454 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

8, 2021.” Exhibit 1 at 51. Enclosed with the administrative decision was a document entitled “Appeals Rights and Procedures,” which included fax, mail, and in-person contact information for the Department in order to request an appeal. Transcript at 6–7.

(2) Claimant received decision # 95454 within two to three days of March 19, 2021. Transcript at 25. Prior to April 8, 2021, claimant attempted to request a hearing on decision # 95454 by submitting multiple contact forms on the Department’s website, but did not receive a confirmation or other response. Claimant did not attempt to request a hearing by other means, such as mail or fax, prior to April 8, 2021, because she thought that she had “covered [her] bases” by submitting the contact forms on the Department’s website. Transcript at 38.

(3) On April 9, 2021, claimant sent an email to the Departments’ office of the director in order to confirm that she had successfully submitted her requests for hearing and to reiterate the reason she was filing an appeal. On April 20, 2021, claimant successfully submitted a hearing request on decision # 95454.

CONCLUSIONS AND REASONS: Order No. 21-UI-176440 is reversed and this matter remanded for a hearing on the merits of decision # 95454.

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 decision # 95454 was due by April 8, 2021. Because claimant did not file her request until April 9, 2021, the request was late. Claimant also filed a request for hearing on April 20, 2021. However, claimant’s April 9, 2021 email to the office of the director contained sufficient information to determine that claimant intended to appeal decision # 95454.¹ Therefore, claimant’s email on April 9, 2021 is construed as a request for hearing.

The order under review concluded that claimant did not have good cause for filing the late request for hearing because she had “serious doubts as to whether she had actually been successful in” filing her requests for hearing via the contact form on the Department’s website, and did not follow up to confirm that she had successfully submitted the request until after the deadline had passed. Order No. 21-UI-176440 at 3. The record does not support this conclusion. At hearing, claimant testified that she had thought that she had “covered [her] bases” by filing the contact forms on the Department’s website, and sent the email on April 9, 2021 because she hadn’t “heard anything at all” in response to the forms she had submitted. Transcript at 38. Claimant also stated in the April 9, 2021 email that she had submitted four contact forms to the Department prior to her having drafted the email, and “received no answer regarding an appeal date or time[.]” Exhibit 1 at 48. This evidence does not establish that claimant had

¹ See OAR 471-040-0005(1) (July 15, 2018).

“serious doubts” about whether she had successfully filed a request for hearing; rather, it suggests that claimant was concerned that the Department had been ignoring her requests.

The record does not show why the Department did not receive claimant’s contact forms. However, claimant’s testimony that she submitted multiple contact forms prior to April 8, 2021 is uncontroverted. Therefore, it is reasonable to conclude from the evidence in the record either that claimant successfully submitted the contact forms but that the Department missed or ignored them, or else that claimant believed erroneously but in good faith that she had successfully submitted them. Thus, the record shows that claimant did not file a timely request for hearing on decision # 95454 due to an excusable mistake: either due to a reasonable reliance on the Department, in the first instance; or an inability to follow the directions to appeal despite substantial efforts to comply, in the second instance. Further, because claimant filed the late request for hearing a day after the timely filing deadline passed, claimant filed the late request within a reasonable time of when the circumstances that prevented the timely filing ceased to exist.

For the above reasons, claimant had good cause for failing to file a timely request for hearing, and filed her late request for hearing within a reasonable time. Claimant’s late request for hearing on decision # 95454 therefore is allowed, and claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 21-UI-176440 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 29, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-176440 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.



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 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.

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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