

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0869

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On April 29, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective April 11, 2021 (decision # 94644). On May 19, 2021, decision # 94644 became final without claimant having filed a request for hearing. On July 9, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on July 21, 2021 issued Order No. 21-UI-170801, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 4, 2021. On July 28, 2021, claimant filed a timely response to the appellant questionnaire. ALJ S. Lee reviewed claimant's response, and on October 14, 2021 issued Order No. 21-UI-177177, cancelling Order No. 21-UI-170801 and re-dismissing claimant's request for hearing as late without good cause, leaving decision # 94644 undisturbed. On October 25, 2021, claimant filed an application for review of Order No. 21-UI-177177 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) On April 8, 2021, claimant's aunt passed away.

(2) On April 29, 2021, the Department mailed decision # 94644 to claimant's address of record on file with the Department. Claimant received decision # 94644 shortly after it was mailed. Decision # 94644 stated, in relevant part, "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 May 19, 2021." Exhibit 1 at 2. After reviewing the decision, claimant did not immediately request a hearing because they "[d]idn't think that [they] could win an appeal." Exhibit 3 at 4.

(3) On May 6, 2021, claimant made contact with the Department. During their conversation with the Department's representative, claimant learned information that made them believe they could be

successful at a hearing on decision # 94644. Claimant did not request a hearing on decision # 94644 during this conversation, nor at any time prior to the May 19, 2021 deadline, because they were grieving the death of their aunt. Exhibit 3 at 4.

(4) From April 11, 2021 to May 8, 2021, claimant filed weekly claims for unemployment insurance benefits with the Department.

(5) On July 9, 2021, claimant filed a request for hearing on decision # 94644.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 94644 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.

On April 29, 2021, the Department mailed decision # 94644 to claimant at claimant's address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on decision # 94644 was May 19, 2021. Claimant did not file a request for hearing on decision # 94644 until July 9, 2021. Accordingly, claimant's request for hearing was late.

Claimant did not establish that factors beyond their reasonable control prevented them from filing a timely hearing request. The record establishes that when claimant received decision # 94644 in the mail, they were grieving the recent loss of their aunt. However, in light of the record evidence demonstrating that during their 20-day window for requesting a hearing claimant was able to both make contact with the Department on May 6, 2021 and file claims for benefits with the Department, claimant did not show that factors beyond their reasonable control prevented them from also filing a request for hearing before the May 19, 2021 deadline.

To the extent that claimant's failure to file a timely hearing request was the result of a mistake on claimant's part, claimant did not show that the mistake was an "excusable mistake" within the meaning of the administrative rules. The record does not, for example, raise a due process issue, and fails to show that any mistake was the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Finally, even if it was assumed, for arguments sake, that claimant's grief constituted a factor beyond their reasonable control that prevented them from meeting the May 19, 2021 filing deadline, claimant failed to establish that they filed their request for hearing within a reasonable time after this factor ceased to exist. Claimant did not file their request for hearing until July 9, 2021. Claimant therefore needed to establish that the factor that prevented them from timely filing their request for hearing on or before May 19, 2021, in this case their grief over their aunt's death, continued to exist through July 2, 2021. However, claimant failed to show that the level of grief they experienced due to their aunt's death, which may have prevented them from filing a request for hearing on or before May 19, 2021, continued

to exist through July 2, 2021. Accordingly, claimant failed to show that they filed their request for hearing within a reasonable time.

Claimant's late request for hearing on decision # 94644 is therefore dismissed.

DECISION: Order No. 21-UI-177177 is affirmed.

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

DATE of Service: November 29, 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 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 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.

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