

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0898

Affirmed ~ Late Request for Hearings Dismissed
Affirmed ~ Ineligible Weeks 30-20 through 34-20, 36-20, 38-20, 44-20 through 46-20, 52-20 through 01-21, 05-21 through 06-21, 08-21 through 09-21

PROCEDURAL HISTORY: On July 20, 2021, the Oregon Employment Department (the Department) served notice of seven administrative decisions concluding that claimant was not eligible to receive unemployment insurance benefits from July 19, 2020 through August 22, 2020 (weeks 30-20 through 34-20; decision # 141106), August 30, 2020 through September 5, 2020 (week 36-20; decision # 142041), September 13, 2020 through September 19, 2020 (week 38-20; decision # 145756), October 25, 2020 through November 14, 2020 (weeks 44-20 through 46-20; decision # 150301), December 20, 2020 through January 9, 2021 (weeks 52-20 through 01-21; decision # 151057), January 31, 2021 through February 13, 2021 (weeks 05-21 through 06-21; decision # 151458), and February 21, 2021 through March 6, 2021 (weeks 08-21 through 09-21; decision # 151701) because claimant filed late claims for benefits for those weeks. On July 21, 2021, the Department served notice of two administrative decisions concluding that claimant was not eligible to receive unemployment insurance benefits from December 20, 2020 through December 26, 2020 (week 52-20; decision # 60643) and January 3, 2021 through January 9, 2021 (week 01-21; decision # 61632) because claimant filed late claims for benefits for those weeks. On August 9, 2021, decisions # 141106, 142041, 145756, 150301, 151057, 151458, and 151701 became final without claimant having filed requests for hearing. On August 10, 2021, decisions # 60643 and 61632 became final without claimant having filed requests for hearing. On August 11, 2021, claimant filed a late request for hearings on decisions # 141106, 142041, 145756, 150301, 151057, 151458, 151701, 60643 and 61632.

ALJ Kangas considered claimant's request, and on September 29, 2021 issued Orders No. 21-UI-175973, 21-UI-175979, 21-UI-175972, and 21-UI-175982 dismissing the request as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 13, 2021; and on September 30, 2021 issued Orders No. 21-UI-176017, 21-UI-175991, 21-UI-175987, 21-UI-175988, and 21-UI-175986 dismissing the request as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 14, 2021. On October 19, 2021, claimant filed a late response to the appellant questionnaire with the Office of Administrative Hearings (OAH) and a timely application for review of Orders No. 21-UI-175973, 21-UI-175979, 21-UI-175972, 21-UI-175982, 21-UI-176017, 21-UI-175991,

21-UI-175987, 21-UI-175988, and 21-UI-175986 with the Employment Appeals Board (EAB). On November 1, 2021, ALJ Kangas mailed letters to claimant regarding each order under review stating that because claimant's response to the appellant questionnaire was late, OAH would not consider it or issue another order, and that Orders No. 21-UI-175973, 21-UI-175979, 21-UI-175972, 21-UI-175982, 21-UI-176017, 21-UI-175991, 21-UI-175987, 21-UI-175988, and 21-UI-175986 remained in effect. This matter comes before EAB based upon claimant's October 19, 2021 timely application for review of Orders No. 21-UI-175973, 21-UI-175979, 21-UI-175972, 21-UI-175982, 21-UI-176017, 21-UI-175991, 21-UI-175987, 21-UI-175988, and 21-UI-175986.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-175973, 21-UI-175979, 21-UI-175972, 21-UI-175982, 21-UI-176017, 21-UI-175991, 21-UI-175987, 21-UI-175988, and 21-UI-175986. For case-tracking purposes, this decision is being issued nine times (EAB Decisions 2021-EAB-0893, 2021-EAB-0894, 2021-EAB-0892, 2021-EAB-0895, 2021-EAB-0900, 2021-EAB-0899, 2021-EAB-0897, 2021-EAB-0898, and 2021-EAB-0896).

FINDINGS OF FACT: (1) On July 20, 2021, the Department mailed administrative decisions # 141106, 142041, 145756, 150301, 151057, 151458, and 151701 to claimant's address of record on file with the Department. The decisions each 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 August 9, 2021." Exhibits 1 at 2.

(2) On July 21, 2021, the Department mailed administrative decisions # 60643 and 61632 to claimant's address of record on file with the Department. The decisions each 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 August 10, 2021." Exhibits 1 at 2.

(3) Claimant received decisions # 141106, 142041, 145756, 150301, 151057, 151458, 151701, 60643 and 61632 in the regular course of the mail.

CONCLUSIONS AND REASONS: Claimant's late request for hearings on decisions # 141106, 142041, 145756, 150301, 151057, 151458, 151701, 60643 and 61632 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. A letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(1)(q).

On July 20, 2021, the Department mailed decisions # 141106, 142041, 145756, 150301, 151057, 151458, and 151701 to claimant's address of record. The 20-day deadline for claimant to file a timely request for hearing on those decisions was August 9, 2021. On July 21, 2021, the Department mailed decisions # 60643 and 61632 to claimant's address of record. The 20-day deadline for claimant to file a timely request for hearing on those decisions was August 10, 2021. Claimant did not file their request for hearings until August 11, 2021. Accordingly, claimant's hearing request on decisions # 141106,

142041, 145756, 150301, 151057, 151458, 151701, 60643 and 61632 was late. The record under review does not show that factors beyond claimant's reasonable control prevented them from filing a timely hearing request on any of the decisions. Although the exact date on which claimant received the decisions at their address of record is unknown, there is a presumption that a letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(1)(q). Nothing in the record serves to rebut that presumption. Claimant provided no explanation for why they did not request a hearing in a timely manner. Accordingly, the record does not show that they received the decision too late to request hearings by the deadlines. The decisions also provided a mailing address and telephone and fax numbers for use in contacting the Department. The record fails to show that it was beyond claimant's reasonable control to carefully read the decisions, identify the deadlines to timely request hearings, and contact the Department before the deadlines to file timely hearing requests.

To the extent that claimant's failure to file timely hearing requests was the result of a mistake on claimant's part, the record does 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. Because the record does not show that factors beyond claimant's reasonable control or an excusable mistake prevented them from filing a hearing request by the August 9, 2021 and August 10, 2021 deadlines, they failed to establish good cause to extend the filing deadline beyond those dates. Accordingly, their late request for hearings on August 11, 2021 is dismissed, leaving decisions # 141106, 142041, 145756, 150301, 151057, 151458, 151701, 60643 and 61632 undisturbed.

DECISION: Orders No. 21-UI-175973, 21-UI-175979, 21-UI-175972, 21-UI-175982, 21-UI-176017, 21-UI-175991, 21-UI-175987, 21-UI-175988, and 21-UI-175986 are affirmed.

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

DATE of Service: November 22, 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 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.

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