

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0966

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On November 16, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received benefits to which she was not entitled, and assessing an overpayment of \$7,661 in regular unemployment insurance benefits and Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 95301). On December 7, 2020, decision # 95301 became final without claimant having filed a request for hearing. On May 4, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on July 15, 2021 issued Order No. 21-UI-170396, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 29, 2021. On July 26, 2021, claimant filed a timely response to the appellant questionnaire. On October 4, 2021, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 21-UI-170396 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 decision # 95301. On October 19, 2021, ALJ Monroe conducted a hearing, and on October 27, 2021 issued Order No. 21-UI-178284, re-dismissing claimant's request for hearing as late without good cause, leaving decision # 95301 undisturbed. On November 14, 2021, claimant filed an application for review of Order No. 21-UI-178284 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The overpayment assessed in decision # 95301 was based in part on a previous administrative decision (decision # 92715) that the Department had mailed to claimant on August 28, 2020, which had concluded that claimant voluntarily quit work without good cause. Exhibit 5 at 9. Claimant mailed a request for hearing on decision # 92715 to the Department prior to the timely appeal deadline for that decision. Decision # 95301 referred to decision # 92715 in its findings of fact. Exhibit 1 at 1.

(2) On November 16, 2020, the Department mailed decision # 95301 to claimant's address on file with the Department. Decision # 95301 stated, "If you disagree with the amount of the overpayment, you

have the right to appeal this decision. Any appeal from this decision must be filed on or before December 7, 2020 to be timely.” Exhibit 1 at 2.

(3) Claimant received decision # 95301 in the mail prior to December 7, 2020. However, claimant became sick with COVID-19 and was quarantined within her bedroom at her parents’ house from November 15, 2020 until December 6, 2020. When claimant left quarantine, she opened mail from the Department that had accumulated during her quarantine. The mail, which had accumulated, included decision # 95301, which claimant opened and read on December 6, 2020.

(4) Because claimant had already submitted a request for hearing on decision # 92715, she was confused about the basis for the overpayment and wished to speak to the Department about the matter. Later on December 6, 2020, claimant began calling the Department to try to speak to them, but was unable to reach the Department due to the high volume of callers at the time. In subsequent days and weeks, claimant tried calling the Department several more times, but was unsuccessful. Claimant also submitted three or four inquiries via the contact form on the Department’s website, but did not specifically request a hearing regarding decision # 95301 in those inquiries. Claimant continued attempting to contact the Department from December 2020 through February 2021 by various means including telephone, website contact, and via help she requested from a U.S. senator’s office.

(5) On February 22, 2021, claimant reached a Department representative on the telephone, who advised claimant how to file an appeal and provided her with a telephone number for OAH. The same day, claimant spoke to an OAH representative, and a hearing was subsequently scheduled on a different administrative decision, rather than either decision # 95301 or 92715.

(6) On May 4, 2021, claimant mailed several documents to OAH, including a copy of the letter she had previously mailed to the Department to request a hearing on decision # 92715. Claimant’s May 4, 2021 correspondence was subsequently construed as a request for hearing on decisions # 92715¹ and 95301.

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 decision # 95301 was due by December 7, 2020. Because claimant did not file her request for hearing until May 4, 2021, the request was late. The record shows that claimant’s

¹ The order under review noted that a hearing was also held on decision # 92715 on October 19, 2021. Order No. 21-UI-179155 at 2. The letter claimant mailed on May 4, 2021 was originally dated September 13, 2020 and did not mention the overpayment decision, which had not yet been issued. Exhibit 2 at 2. From this evidence, it is reasonable to conclude that OAH construed claimant’s May 4, 2021 letter as a request for hearing on both decisions # 92715 and 95301.

failure to meet the timely filing deadline was the result of claimant's confusion about the various administrative decisions that the Department had issued to her and the hearing she had already requested for one of those decisions. Claimant began attempting to contact the Department to resolve her confusion almost immediately after she read decision # 95301, and continued to attempt to do so by various means for nearly three months before reaching a Department representative. The record therefore shows that claimant's failure to meet the timely filing deadline may have been the result of both factors beyond her control, as she received and read the administrative decision only a day before the deadline and had been recovering from an illness; and an excusable mistake, as she demonstrated that she was not able to follow the Department's instructions on how to appeal the decision despite substantial efforts to comply.

However, even if claimant had good cause for filing the appeal late due to one or both of the above reasons, claimant has not shown that she filed the appeal within a reasonable time after the factors which prevented her from filing it timely ceased to exist. The record shows that a Department representative advised claimant on February 22, 2021 to contact OAH in order to appeal the administrative decision at issue in this matter, decision # 95301. Therefore, the factors which prevented her from filing the request for hearing on time ceased no later than that day. Claimant contacted OAH the same day as instructed, but, for reasons that are not clear from the record, did not file a request for hearing on decision # 95301 at that time, and then did not file a request for hearing on that decision until May 4, 2021. As May 4, 2021 is more than seven days after February 22, 2021, claimant did not file her request for hearing within a reasonable period of time.

Claimant's late request for hearing on decision # 95301 therefore is subject to dismissal under ORS 657.875 and OAR 471-040-0010, and is dismissed.

DECISION: Order No. 21-UI-178284 is affirmed.

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

DATE of Service: December 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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