

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0990

Reversed
Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On April 21, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work for the weeks including January 31, 2021 through April 10, 2021 (weeks 05-21 through 14-21) and was therefore not eligible to receive unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 135620). On May 11, 2021, decision # 135620 became final without claimant having filed a request for hearing. On June 9, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on July 15, 2021 issued Order No. 21-UI-170381, 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 19, 2021, claimant filed a timely response to the appellant questionnaire. On October 4, 2021, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 21-UI-170381 was vacated. On October 21, 2021, OAH mailed notice of a hearing scheduled for November 3, 2021 to consider whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 135620. On November 3, 2021, ALJ Frank conducted a hearing, and on November 10, 2021 issued Order No. 21-UI-179425, re-dismissing claimant's request for hearing as late without good cause and leaving decision # 135620 undisturbed. On November 22, 2021, claimant filed an application for review of Order No. 21-UI-179425 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant received decision # 135620 in the regular course of the mail after the Department mailed it to his address of record on April 21, 2021. The decision stated, "You have the right to appeal this decision if you believe it is not correct. Your request for appeal must be received no later than May 11, 2021." Exhibit 1 at 2. Claimant read decision # 135620, disagreed with it, and understood that he had until May 11, 2021 to file a timely request for hearing regarding the decision.

(2) On April 26, 2021, claimant requested a hearing on decision # 135620 via the Department's online "contact us" form. Audio Record at 26:30, Exhibit 3 at 2.

(3) On May 6, 2021, claimant contacted the Department via their “Zendesk” online customer support and was “questioning the denial” of his Pandemic Unemployment Assistance (PUA) and regular unemployment insurance benefits. Audio Record at 19:01. Claimant asked, “Please someone help me as I am without income about to lose my home because of denial of regular benefits and PUA. Please help me I can’t get through; the phone lines are always busy.” Audio Record at 19:24 to 19:36.

(4) On May 10, 2021, claimant spoke with a Department representative by telephone and inquired about his April 26, 2021 request for hearing on decision # 135620 because claimant had not “heard anything” from the Department regarding his request. Exhibit 3 at 2. The representative told claimant that the Department had received his request.

(5) On June 3, 2021, the Department responded to claimant’s May 6, 2021 communication through Zendesk.

(6) On June 9, 2021, a Department representative spoke with claimant and recorded a request for hearing from claimant on decision # 135620.

CONCLUSIONS AND REASONS: Claimant’s request for hearing on decision # 135620 is allowed. Claimant is entitled to a hearing on the merits of that decision.

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.

Claimant’s request for hearing on decision # 135620 was due by May 11, 2021. The Department did not record a request for hearing for claimant until June 9, 2021; as such, that request for hearing was late. However, claimant alleged that he filed requests for hearing on April 26, 2021 and April 27, 2021. Furthermore, claimant’s May 6, 2021 and May 10, 2021 communications with the Department each contained sufficient information to show that claimant intended to appeal decision # 135620.¹

The order under review found that claimant’s testimony that he filed a request for hearing on April 26, 2021 and April 27, 2021 was “inconsistent” and “unreliable,” and therefore concluded that claimant did not file a timely request for hearing on decision # 135620. Order No. 21-UI-179425 at 3. The order relied on the Department’s testimony that they did not have a record of claimant’s April 26, 2021 and April 27, 2021 requests. Order No. 21-UI-179425 at 3. Moreover, the order under review did not construe claimant’s communications with the Department on May 6, 2021 and May 10, 2021 as requests for hearing on decision # 135620. However, the preponderance of the evidence shows that claimant filed a request for hearing by the May 11, 2021 deadline, and that he is therefore entitled to a hearing on the merits of decision # 135620.

¹ See OAR 471-040-0005(1), which provides, in relevant part, that a request for hearing is valid if “the party specifically requests a hearing *or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed.*” (Emphasis added) (July 15, 2018).

The record shows that claimant requested a hearing online on April 26, 2021, and that he provided the same information to the Department about his intent to appeal decision # 135620 when he contacted them on May 10, 2021. Claimant's testimony was consistent with his questionnaire response showing that he filed a request for hearing through the Department's internet portal on April 26, 2021. Claimant's testimony was also consistent with his questionnaire response that he discussed his hearing request with the Department on May 10, 2021, before the deadline to request a timely hearing. Although the Department asserted that they did not have record of a request for hearing from claimant until June 9, 2021, the testimony from the Department does not outweigh claimant's testimony and questionnaire response. The testimony from the Department was hearsay. The Department's witness, unlike claimant, was not a firsthand witness to any of the communications to which she testified during the hearing. In addition, the record shows that the Department's testimony may not have addressed all of claimant's contacts with the Department, because the direct review of the Department's witness continued *before* the witness completed their review of the contacts pertaining to all of claimant's administrative decisions pending with the Department. Audio Record at 23:00 to 23:27.

The record does not show why the Department did not receive claimant's requests for hearing before the May 11, 2021 deadline. However, based on the record, it is reasonable to conclude that claimant submitted requests for hearing on April 26, 2021, April 27, 2021, and May 10, 2021. Claimant's request for hearing on decision # 135620 is therefore allowed, and claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 21-UI-179425 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: December 30, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-179425 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 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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