

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1037

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On February 1, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was overpaid \$1,729 in regular unemployment insurance benefits and \$4,200¹ in Federal Pandemic Unemployment Compensation (FPUC) benefits that they must repay the Department (decision # 81700). On February 22, 2021, decision # 81700 became final without claimant having filed a request for hearing. On March 16, 2021, claimant filed a late request for hearing. ALJ Kangas reviewed claimant's request, and on November 15, 2021 issued Order No. 21-UI-179668, 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 November 29, 2021. On November 30, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-179668 with the Employment Appeals Board (EAB). On December 7, 2021, ALJ Kangas mailed a letter to claimant stating that because the response to the appellant questionnaire was late, the Office of Administrative Hearings (OAH) would not consider it or issue another order regarding claimant's late request for hearing and that Order No. 21-UI-179668 remained in effect. This matter is before EAB based upon claimant's timely application for review of Order No. 21-UI-179668.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's response to the appellant questionnaire, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit will remain in the record.

¹ Decision # 81700 erroneously states in its findings that claimant was paid \$5,200 in FPUC rather than the accurate amount of \$4,200. Decision # 81700 accurately states in its conclusion and schedule of adjustments that the total amount claimant was overpaid was \$5,929 (\$4,200 FPUC plus \$1,729 regular benefits).

FINDING OF FACT: (1) On February 1, 2021, the Department mailed decision # 81700 to claimant's address on file with the Department. Decision # 81700 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 February 22, 2021 to be timely." Exhibit 1 at 2. Decision # 81700 also provided a mailing address, two telephone numbers, and a fax number for use in contacting the Department. Exhibit 1 at 1.

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.

On February 1, 2021, the Department mailed decision # 81700 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 that decision was February 22, 2021. Claimant did not file a request for hearing on decision # 81700 until March 16, 2021. Accordingly, claimant's request for hearing was late.

The record, including claimant's response to the appellant questionnaire, does not establish that claimant had good cause to extend the February 22, 2021 deadline to file their request for hearing. *See* EAB Exhibit 1. Claimant's appellant questionnaire states that claimant could have requested a hearing by February 22, 2021 if they "would've got [their] mail in time." EAB Exhibit 1 at 3. A party's failure to receive their mail may, under some circumstances, be a factor beyond a party's reasonable control preventing them from filing a timely request for hearing. However, claimant's response to the appellant questionnaire does not contain sufficient information to conclude that claimant's failure to receive their mail "in time" was such a factor. Claimant's response to the appellant questionnaire does not show when claimant received decision # 81700, or whether claimant's failure to receive decision # 81700 "in time" was due to circumstances attributable to claimant, to the U.S. Postal Service, or to some other factor.

In addition, because claimant's response to the appellant questionnaire does not show when claimant received decision # 81700, or how many days passed between when claimant received decision # 81700 when claimant requested a hearing on March 16, 2021, the record fails to show that claimant filed their request for hearing within the seven-day reasonable time period from when the factors that prevented a timely filing ceased to exist. Accordingly, the record does not show that claimant filed their request for hearing within a reasonable time upon a showing of good cause. Claimant's late request for hearing on decision # 81700 therefore is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 21-UI-179668 is affirmed.

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

DATE of Service: January 5, 2022

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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