

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0015

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On March 26, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received benefits to which they were not entitled, and assessing an overpayment of \$9,763 in Pandemic Emergency Unemployment Compensation (PEUC) benefits and Federal Pandemic Unemployment Compensation (FPUC) that claimant was liable to repay to the Department and \$1,359 in Extended Benefits to be deducted from any benefits payable during the 5-year period following the week in which the decision becomes final (decision # 162839). On April 15, 2021, decision # 162839 became final without claimant having filed a request for hearing. On June 30, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on July 27, 2021 issued Order No. 21-UI-171173, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 10, 2021. On August 10, 2021, claimant filed a timely response to the appellant questionnaire. On September 28, 2021, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 21-UI-171173 was vacated and that a hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # 162839. On December 6, 2021, ALJ Frank conducted a hearing, and on December 13, 2021, issued Order No. 21-UI-181707, re-dismissing claimant's request for hearing as late without a showing of good cause, and leaving decision # 162839 undisturbed. On December 21, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On March 26, 2021, the Department mailed decision # 162839 to claimant's address on file with the Department. Claimant received decision # 162839 shortly after it was mailed. Decision # 162839 stated, "Any appeal from this decision must be filed on or before April 15, 2021 to be timely." Exhibit 1 at 2. Decision # 162839 also provided a P.O. Box address, three telephone numbers, and a fax number for use in contacting the Department. Exhibit 1 at 1.

(2) In late March or early April 2021, after claimant received decision # 162839, claimant attempted to request a hearing via the internet. Claimant was not successful in completing the hearing request online.

(3) On April 9, 2021, claimant called the Department and asked questions about decision # 162839. The Department representative gave claimant instructions on how to request a hearing on the decision. Claimant did not request a hearing at that time via the Department representative.

(4) On June 30, 2021, claimant filed a request for hearing on decision # 162839 by fax.

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 # 162839 was due by April 15, 2021. Because claimant did not file their request for hearing until June 30, 2021, the request was late. Claimant did not establish good cause to extend the April 15, 2021 deadline to file her request for hearing on decision # 162839.

Claimant did not establish that a circumstance beyond her reasonable control prevented her from timely filing a hearing request. The record shows that claimant received the decision shortly after it was mailed and that Decision # 162839 advised claimant that April 15, 2021 was the deadline for filing a timely appeal. While claimant tried unsuccessfully to request a hearing online in late March or early April 2021, appealing the decision by the April 15, 2021 deadline was nevertheless within claimant's reasonable control. This is because on April 9, 2021, claimant spoke with a Department representative about decision # 162839, and received instructions on how to request a hearing, but claimant did not request a hearing at that time via the Department representative. It was within claimant's reasonable control to request a hearing by the deadline through the Department representative but claimant did not.

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. In particular, claimant did not show that her attempt to request a hearing online in late March or early April 2021 was unsuccessful because of a due process issue, inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Nor did claimant establish that her failure to request a hearing through the Department representative on April 9, 2021, was the result of any of the above-mentioned reasons that are sufficient to constitute an excusable mistake.

Accordingly, claimant's late request for hearing on decision # 162839 is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 21-UI-181707 is affirmed.

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

DATE of Service: January 21, 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 – 本判决会影响您的失业救济金。如果您不明白本判决，请立即联系就业上诉委员会。如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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