

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0038

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On July 19, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not register following the rules set by the Director and was therefore not eligible to receive unemployment insurance benefits beginning June 27, 2021 and until the reason for the denial had ended. On August 9, 2021, the July 19, 2021 decision became final without claimant having filed a request for hearing. On August 12, 2021, claimant filed a late request for hearing. On December 10, 2021, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for December 15, 2021 to consider whether claimant's late request for hearing should be allowed and if so, the merits of the July 19, 2021 administrative decision. On December 15, 2021, ALJ Frank conducted a hearing, and on December 16, 2021 issued Order No. 21-UI-182069, dismissing claimant's request for hearing as late without a showing of good cause and leaving the July 19, 2021 administrative decision undisturbed. On January 3, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On July 19, 2021, the Department mailed an administrative decision to claimant's address on file with the Department. The July 19, 2021 decision stated, "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 **08/09/2021**. This decision **DENIES** benefits." Exhibit 1 at 1 (bold in original). The July 19, 2021 decision also provided a P.O. Box address, two telephone numbers, and a fax number for use in contacting the Department. Exhibit 1 at 1. Claimant received the July 19, 2021 decision shortly after it was mailed and saw that it said benefits were "denied," but "didn't read the whole paper." Audio Record at 17:75.

(2) At the end of July 2021, claimant had to leave her home and began to experience homelessness. Claimant had not had to complete iMatchSkills or request a hearing when she had claimed benefits in the past. Claimant did not know how to use a computer for purposes of her benefits claim.

(3) As of August 2, 2021, claimant began living with her sister and niece in their home. At that time, claimant "got all her paperwork together." Audio Record at 14:36.

(4) On August 2, 2021, claimant called the Department, spoke with a representative, and updated her address. The representative told claimant that she needed to complete the benefit registration process because it was not completed yet.

(5) On August 5, 2021, claimant called the Department again because she had not been paid benefits. The representative told claimant to contact her local Department WorkSource office. Later that day, claimant's niece assisted claimant with completing the remainder of the benefit registration process online. Audio Record at 9:10.

(6) On August 11, 2021, claimant called the Department because she was not receiving benefits and a representative told her that she could request a hearing regarding the July 19, 2021 decision.

(7) On August 12, 2021, claimant requested a hearing online regarding the July 19, 2021 decision.

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 the July 19, 2021 decision was due by August 9, 2021. Because claimant did not file their request for hearing until August 12, 2021, the request was late. Claimant did not establish good cause to extend the August 9, 2021 deadline to file her request for hearing on the July 19, 2021 decision.

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 the July 19, 2021 decision advised claimant that August 9, 2021 was the deadline for filing a timely appeal. Although claimant was experiencing homelessness until August 2, 2021, by that time, claimant had retrieved her "paperwork" and was able to call the Department and complete the benefit registration process online. It was, therefore, within claimant's reasonable control to use a telephone or computer for her benefits claim by August 9, 2021. Claimant did not read the entire decision and did not understand that she could request a hearing until she spoke with the Department on August 11, 2021. However, it was within claimant's reasonable control to read the July 19, 2021 decision in its entirety and if she did not understand the decision, to contact the Department about the decision. Although claimant contacted the Department on August 2, 2021 and August 5, 2021, the record does not show that claimant told the Department during those calls that she was aware of the July 19, 2021 decision and wanted to appeal it. *Kroetch v. Employment Department*, 289 Or App 291, 409 P3d 60 (2017) (submission of a statement or documentation of facts that is inconsistent with an existing determination, by itself, is not a request for hearing; the submission must include some indication that the party is aware the underlying decision exists and that the party wants to challenge it). The preponderance of the evidence shows that it was within claimant's reasonable control to request a hearing by the deadline by telephone or online, 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 failure to request a hearing through the Department representative on August 2, 2021 or August 5, 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 the July 19, 2021 decision is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 21-UI-182069 is affirmed.

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

DATE of Service: February 11, 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 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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

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