

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0193

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On April 16, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective November 29, 2020 (decision # 131102). On May 6, 2021, decision # 131102 became final without claimant having filed a request for hearing. On August 29, 2021, claimant filed a late request for hearing on decision # 131102.

ALJ Kangas considered claimant's request, and on September 14, 2021 issued Order No. 21-UI-174736, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 28, 2021. On October 4, 2021, claimant filed a timely application for review of Order No. 21-UI-174736 with the Employment Appeals Board (EAB). On October 5, 2021, claimant filed a late response to the appellant questionnaire with the Office of Administrative Hearings (OAH). On January 20, 2021, ALJ Kangas mailed a letter stating that OAH would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late. This matter comes before EAB based upon claimant's October 4, 2021 application for review of Order No. 21-UI-174736.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's response to the appellant questionnaire, 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(s) will remain in the record.

CONCLUSIONS AND REASONS: Order No. 21-UI-174736 is set aside and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 131102 should be allowed and, if so, 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.

The request for hearing on decision # 131102 was due by May 6, 2021. Because claimant did not file her request for hearing until August 29, 2021, the request was late. On their appellant questionnaire response, claimant stated that she did not file the request for hearing by the timely filing deadline because she did not receive decision # 131102 until "the end of June 2021" as she was out of town for most of May 2021, and there were "several people who receive and or check the mail" at the address claimant's mail was sent to. EAB Exhibit 1 at 1. Claimant also included a statement, written in her own hand but purportedly transcribing with permission a statement made by her mother, which indicated that claimant visited her mother, arriving on August 8, 2021 and remaining until May 28, 2021. EAB Exhibit 1 at 3. Assuming that the dates in that statement were transposed in error, it appears to suggest that claimant was out of town, and therefore unable to receive mail, from late May 2021 until early August 2021. Claimant also explained that she had been "homeless since March 21 2020 with no car and poor cell service." EAB Exhibit 1 at 2.

From these various statements, it appears that claimant may not have had regular access to the mailbox where decision # 131102 was mailed, and that this lack of access may have caused or contributed to claimant's failure to file a timely request for hearing. However, more information is needed to determine whether claimant had good cause to file the late request for hearing. As a preliminary matter, decision # 131102 was mailed in mid-April 2021, but claimant's statements on the appellant questionnaire response suggest that she was out of town starting in either early or late May 2021. If so, it is not clear that decision # 131102 was delivered after claimant left town. On remand, the ALJ should inquire as to the exact dates that claimant was out of town and what efforts, if any, she made to inquire about mail delivered to her at the address her mail was delivered to, both before and after she left town. Additionally, the record should be developed to determine when and how claimant first received a copy of decision # 131102 or otherwise became aware of its existence; and whether claimant filed the request for hearing within a "reasonable time" afterwards.

Order No. 21-UI-174736 therefore is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 131102.

DECISION: Order No. 21-UI-174736 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: February 7, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-174736 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 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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