

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0213

Reversed & Remanded

PROCEDURAL HISTORY: On August 27, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to register for work in accordance with the Department's rules and therefore was ineligible to receive unemployment insurance benefits for the week of August 8, 2021 through August 14, 2021 (week 32-21) and until the reason for the denial had ended. On September 16, 2021, the August 27, 2021 administrative decision became final without claimant having filed a request for hearing. On September 17, 2021 claimant filed a late request for hearing on the August 27, 2021 administrative decision. ALJ Kangas considered claimant's request, and on November 2, 2021 issued Order No. 21-UI-178729, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 16, 2021. On November 19, 2021, claimant filed a late response to the appellant questionnaire with the Office of Administrative Hearings (OAH) and a timely application for review of Order No. 21-UI-178729 with the Employment Appeals Board (EAB). On January 31, 2022, ALJ Kangas mailed a letter to claimant stating that because claimant's response to the appellant questionnaire was late, OAH would not consider it or issue another order, and that Order No. 21-UI-178729 remained in effect. This matter comes before EAB based on claimant's timely application for review of Order No. 21-UI-178729.

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.

FINDINGS OF FACT: (1) On August 27, 2021, the Department mailed the August 27, 2021 administrative decision to claimant's address on file with the Department. The August 27, 2021 administrative 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 09/16/2021." Exhibit 1 at 1.

(2) Claimant's post office, where they received their mail, had limited their hours and was sometimes closed due to vandalism. EAB Exhibit 1 at 2.

(3) On September 17, 2021, claimant received the August 27, 2021 administrative decision. Claimant requested a hearing on the decision that day.

CONCLUSIONS AND REASONS: Order No. 21-UI-178729 is set aside and the matter remanded to determine whether claimant had good cause to file a late request for hearing on the August 27, 2021 administrative decision and, if they did, 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 the August 27, 2021 administrative decision was due by September 16, 2021. Because claimant did not file their request for hearing until September 17, 2021, the request for hearing was late. Claimant's response to the appellant questionnaire shows that claimant may have had good cause to extend the deadline to request a hearing on the August 27, 2021 administrative decision. EAB Exhibit 1. However, further inquiry is needed to be able to make that determination.

On their appellant questionnaire response, claimant stated that they did not file their request for hearing by September 16, 2021 because they received the August 27, 2021 administrative decision on September 17, 2021. EAB Exhibit 1 at 1, 2. They further explained that they did not have the August 27, 2021 decision in their possession before September 17, 2021 because their mail was sent to a post office box in a post office that had "abruptly limited hours and sometimes even closed" due to vandalism of the post office and mailboxes. EAB Exhibit 1 at 2. That claimant did not have immediate access to their mail because their post office abruptly limited their hours and was closed may have constituted a factor beyond claimant's reasonable control. However, further inquiry is needed to determine whether claimant knew that an administrative decision had been issued on or about August 27, 2021, and if they knew this, when they first knew it had been issued. On remand, further inquiry is needed regarding how often claimant went to the post office to check their mail during the relevant time period, and the reasons why claimant did not check their mail more often during that time. On remand, claimant should provide information regarding the days and hours the post office was open during the period of August 27, 2021 through September 17, 2021. Further inquiry is needed to determine what efforts claimant made, if any, to check their mail during the post office's limited hours. In addition, the record does not currently show if the vandalism at the post office delayed the delivery of claimant's mail. The record appears to show that claimant filed the request for hearing within a reasonable time once they received the decision. However, new information at the remand hearing may require the ALJ to develop the record further regarding whether claimant filed their request for hearing within a reasonable time after the circumstances that prevented their timely filing ended.

Order No. 21-UI-178729 is therefore 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 the August 27, 2021 decision.

DECISION: Order No. 21-UI-178729 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 11, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order 21-UI-178729 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

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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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