

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0242

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On November 24, 2020, 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 March 29, 2020 (decision # 81637). On December 14, 2020, decision # 81637 became final without claimant having filed a request for hearing. On August 22, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on October 19, 2021 issued Order No. 21-UI-177496, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 2, 2021. On October 21, 2021, claimant filed a timely response to the appellant questionnaire. On January 18, 2022, the Office of Administrative Hearings (OAH) mailed claimant a letter stating that Order No. 21-UI-177496 was vacated and a hearing would be scheduled to address whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 81637. On February 7, 2022, ALJ Murdock conducted a hearing at which the employer failed to appear, and on February 8, 2022, issued Order No. 22-UI-185877, dismissing claimant's request for hearing as late without good cause, leaving decision # 81637 undisturbed. On February 14, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument. The record does not show that claimant requested a hearing on decision # 81637 within a reasonable time upon a showing of good cause to extend the deadline to request a hearing. Decision # 81637 was mailed to claimant on November 24, 2020. Claimant's written argument, and his testimony at hearing, show that due to illness, a death in his family, and being evicted from the address where decision # 81637 was mailed, claimant did not receive decision # 81637 until the end of December 2020 or sometime in January 2021. Audio Record at 15:06 to 16:25. Because claimant's inability to retrieve his mail until as late as January 2021 was more likely than not a factor beyond claimant's reasonable control, claimant had good cause to extend the deadline to request a hearing for decision # 81637. However, the law permits the deadline to be extended only *seven days* after the factors that prevented a timely filing ceased to exist. The factors that prevented claimant from filing a request for hearing on time ceased to exist when claimant recovered his mail, including decision # 81637, in January 2021. Because claimant did not file a request

for hearing until seven *months* later, on August 22, 2021, claimant did not file the request for hearing within a reasonable time after receiving decision # 81637.

When claimant read decision # 81637 in January 2021, claimant understood that the decision was a denial of his unemployment insurance benefits claim, and that the deadline to appeal the decision (December 14, 2020) had passed by the time he received the decision. Audio Record at 15:06 to 16:25. Claimant asserted in his written argument that he could not do “anything with the appeal” until he was “stable and able to survive daily,” and had a way to remain in contact with the Department. Claimant also asserted that he did not have money to respond to a letter. However, claimant’s hearing testimony shows that claimant did not file the appeal within seven days after obtaining the decision because he “didn’t take the time to read” it, and did not therefore know that he could appeal the decision. Audio Record at 19:39 to 19:41. Although claimant’s failure to request a hearing was in part the result of the mistaken assumption that he could not appeal decision # 81637, it was not an “excusable mistake” within the meaning of the applicable law because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. For these reasons, claimant failed to show good cause for his late request for hearing on decision # 81637.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

DECISION: Order No. 22-UI-185877 is affirmed.

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

DATE of Service: March 3, 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 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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