

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0301

Reversed & Remanded

PROCEDURAL HISTORY: On June 4, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective March 7, 2021 (decision # 111253). On June 24, 2021, decision # 111253 became final without claimant having filed a request for hearing. On July 12, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on October 4, 2021 issued Order No. 21-UI-176249, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 18, 2021. On October 19, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-176249 with the Employment Appeals Board (EAB). On January 18, 2022, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding this matter because claimant's questionnaire response was late. This matter comes before EAB based upon claimant's October 19, 2021 application for review of Order No. 21-UI-176249.

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(s) will remain in the record.

FINDINGS OF FACT: (1) On June 4, 2021, the Department mailed claimant decision # 111253. The 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 June 24, 2021." Exhibit 1 at 2.

(2) On June 11, 2021, claimant received decision # 111253. EAB Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Order No. 21-UI-176249 is set aside and this matter remanded for a hearing on whether claimant made a timely request for hearing on decision # 111253, if not, whether claimant's late request for hearing on decision # 111253 should be allowed and, if claimant should be allowed a hearing, the merits of decision # 111253.

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.

Claimant's request for hearing on decision # 111253 was due by June 24, 2021. Because the record shows that they did not file their request for hearing until July 12, 2021, the request was late. However, claimant has asserted in their appellant questionnaire response that after they received a copy of decision # 111253 on June 11, 2021, they filed a request for hearing on June 23, 2021 via U.S. mail and "online", and that they have maintained an "electronic copy" of their online request as evidence that the request was, in fact, made. EAB Exhibit 1 at 1. Claimant's appellant questionnaire response therefore raises the possibility that claimant may have made a timely request for hearing on June 23, 2021, and that despite this timely request, the Department did not receive claimant's request due to circumstances beyond claimant's reasonable control. As such, inquiry is needed on remand that addresses the circumstances surrounding claimant's contention that they made a timely request for hearing on June 23, 2021, including, but not limited to, the method or methods claimant used to make this request. This inquiry should also address what evidence, in "electronic copy" form or otherwise, claimant has available to them that might offer support for their contention that they made a timely request for hearing on June 23, 2021.¹

If it is determined on remand that claimant did not file a timely request for hearing, further inquiry should address whether claimant's August 10, 2021 late request for hearing should be allowed using the criteria established in ORS 657.269, ORS 657.875, and OAR 471-040-0010. If it is determined that claimant is entitled to a hearing either because his request for hearing was timely, or because his late request for hearing was supported by good cause and should be allowed, inquiry will then be necessary to address the merits of decision # 111253.

DECISION: Order No. 21-UI-176249 is set aside, and this matter remanded for further proceedings consistent with this order.

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

¹ The parties may offer new information into evidence at the remand hearing, such as the "electronic copy" of their online request for hearing claimant has referenced in their appellant questionnaire response. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

DATE of Service: March 10, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-176249 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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