

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0304

Reversed & Remanded

PROCEDURAL HISTORY: On December 11, 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 May 17, 2020 (decision # 82254). On December 31, 2020, decision # 82254 became final without claimant having filed a request for hearing. On October 26, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on November 23, 2021 issued Order No. 21-UI-180316, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by December 7, 2021. On December 9, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-180316 with the Employment Appeals Board (EAB). On March 2, 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 December 9, 2021 application for review of Order No. 21-UI-180316.

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 December 11, 2020, the Department mailed decision # 82254 to the address on file for claimant, which was an address in Portland, Oregon. Exhibit 1 at 1. 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 December 31, 2020." Exhibit 1 at 2.

(2) Claimant did not receive decision # 82254 because they did not live at the address in Portland. Exhibit 2 at 2. At the time, claimant lived at an address in Fairview, Oregon. Exhibit 2 at 2. The Department sent decision # 82254 to the Portland address because “there was a mistake in the change of address[.]” Exhibit 2 at 2.

(3) At some point after December 11, 2020, but before or on October 26, 2021, claimant “talked to someone at the [Department] and . . . realized the address was wrong [and] that’s why [claimant] hasn’t received notices.” EAB Exhibit 1 at 2. On October 26, 2021, filed a request for hearing on decision # 82254.

CONCLUSIONS AND REASONS: Order No. 21-UI-180316 is set aside and this matter remanded for a hearing on whether claimant’s late request for hearing on decision # 82254 should be allowed and, if so, the merits of decision # 82254.

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 # 82254 was due by December 31, 2020. Because claimant did not file their request for hearing until October 26, 2021, the request was late.

On these facts, claimant may have had good cause to extend the 20-day deadline to file a request for hearing on decision # 82254. The record suggests that claimant did not file a request for hearing by the December 31, 2020 deadline because they were unaware of it due to the decision not being sent to their address in Fairview. The fact that the Department did not send the decision to the Fairview address could constitute a factor beyond claimant’s reasonable control that prevented them from timely filing. If so, and if claimant’s October 26, 2021 filing date occurred within a seven-day “reasonable time” after the factors beyond claimant’s reasonable control preventing a timely filing ceased to exist, then good cause would exist to allow claimant’s late filing.

Remand is necessary to develop the record to determine why the Department sent the decision to the Portland address rather than the Fairview address, and whether doing so amounted to a factor beyond claimant’s reasonable control that prevented a timely filing. On remand, the ALJ should ask questions to better develop the circumstances surrounding the “mistake in the change of address,” which apparently was responsible for the administrative decision being sent to the Portland address. The ALJ should ask questions to assess if claimant failed to receive decision # 82254 because the Department mailed it to an incorrect address despite having the correct address, or if claimant failed to receive the decision because they did not notify the Department of an updated address while they were claiming benefits.

The record should also be developed to determine when claimant learned of the existence of decision # 82254, and whether claimant filed their request for hearing within seven days of that point in time. If it is determined on remand that claimant’s late request for hearing should be allowed, inquiry will then be necessary to address the merits of decision # 82254.

DECISION: Order No. 21-UI-180316 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 11, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-180316 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

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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