

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0305

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On July 28, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had failed to register for work in accordance with the Department's rules and was therefore not eligible to receive unemployment insurance benefits beginning July 4, 2021 and until the reason for the denial had ended. On August 17, 2021, the July 28, 2021 administrative decision became final without claimant having filed a request for hearing. On August 31, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks including July 25, 2021 through August 7, 2021 (weeks 30-21 through 31-21) and therefore was ineligible to receive benefits for those weeks (decision # 80954). On September 20, 2021, decision # 80954 became final without claimant having filed a request for hearing. On October 1, 2021, claimant filed late requests for hearing on the July 28, 2021 administrative decision and decision # 80954. ALJ Kangas considered claimant's requests, and on December 6, 2021, issued Orders No. 21-UI-181099 and No. 21-UI-181100, dismissing claimant's late requests for hearing on the July 28, 2021 administrative decision and decision # 80954, respectively, as late, subject to claimant's right to renew the requests by responding to appellant questionnaires by December 20, 2021. On December 23, 2021, claimant filed a late response to the appellant questionnaires and timely applications for review of Orders No. 21-UI-181099 and No. 21-UI-181100 with the Employment Appeals Board (EAB). On January 20, 2022, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire responses or issue another order regarding these matters because the questionnaire responses were late. These matters come before EAB based on claimant's December 23, 2021 applications for review of Orders No. 21-UI-181099 and No. 21-UI-181100.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-181099 and No. 21-UI-181100. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0305 and 2021-EAB-0306).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching these decisions under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's response to the appellant questionnaire, which has been marked as EAB Exhibit 1. A copy of EAB Exhibit 1 has been

provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 to the record of this case 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 July 28, 2021, the Department mailed an administrative decision to claimant's address on file with the Department. The July 28, 2021 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 08/17/2021." 2021-UI-47564 Exhibit 1 at 1. The decision also listed a P.O. box address, two telephone numbers, and a fax number for use in the contacting the Department. 2021-UI-47564 Exhibit 1 at 1.

(2) On August 31, 2021, the Department mailed decision # 80954 to claimant's address on file with the Department. Decision # 80954 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 September 20, 2021." 2021-UI-47566 Exhibit 1 at 2. The decision also listed a P.O. box address, three telephone numbers, and a fax number for use in the contacting the Department. 2021-UI-47566 Exhibit 1 at 1.

(3) On October 1, 2021, claimant filed requests for hearing on the July 28, 2021 administrative decision and decision # 80954 via the Department's online web form.

(4) Claimant did not file requests for hearing on the July 28, 2021 administrative decision and decision # 80954 by August 17, 2021 and September 20, 2021, respectively, because due to "Covid virus spread [they] stayed home." EAB Exhibit 1 at 2. To meet the timely filing deadlines for the requests for hearing, claimant could have set a reminder on their calendar and computer. EAB Exhibit 1.

CONCLUSIONS AND REASONS: Claimant's late requests for hearing on the July 28, 2021 administrative decision and decision # 80954 are dismissed.

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 July 28, 2021 administrative decision was due on August 17, 2021, and the request for hearing on decision # 80954 was due on September 20, 2021. Because claimant did not file their requests for hearing until October 1, 2021, the requests were late for both decisions. Claimant did not establish good cause to extend the respective appeal deadlines for either administrative decision because they did not establish that a circumstance beyond their reasonable control prevented them from filing timely hearing requests.

First, the record does not show that claimant failed to receive the decisions in the regular course of the mail. The decisions each stated the deadline to file a timely request for hearing. 2021-UI-47564 Exhibit 1 at 1; 2021-UI-47566 Exhibit 1 at 2. Claimant asserted in their questionnaire response that they "stayed

home” due to COVID-19. EAB Exhibit 1 at 2. However, they did not explain how staying home affected their ability to request a hearing in a timely manner, especially considering that they ultimately filed the requests for hearing online via the Department’s web form. Also, both the administrative decisions provided telephone numbers claimant could have presumably used to request hearings in a timely manner without leaving their home. The preponderance of the evidence in the record therefore shows that it was within claimant’s reasonable control to request hearings on the July 28, 2021 administrative decision and decision # 80954 by the respective deadlines through mail, telephone, or the Department’s online web form.

To the extent that claimant’s failure to file timely hearing requests was the result of a mistake on claimant’s part, claimant did not show that the mistake was an “excusable mistake” within the meaning of the administrative rules. Accordingly, claimant’s late requests for hearing on the July 28, 2021 administrative decision and decision # 80954 are subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Orders No. 21-UI-181099 and No. 21-UI-181100 are affirmed.

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

DATE of Service: March 11, 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 desisyong ito.

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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