

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0343

Affirmed ~ Late Request for Hearing Dismissed
Confirmada ~ La Aplicación Tardía Para Una Audiencia Es Rechazada

PROCEDURAL HISTORY: On October 6, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work during the week of September 5, 2021 through September 11, 2021 (week 36-21) and was therefore ineligible to receive unemployment insurance benefits for that week (decision # 74343). On October 26, 2021, decision # 74343 became final without claimant having filed a request for hearing. On November 15, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on January 26, 2022 issued Order No. 22-UI-184866, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 9, 2022. On February 15, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-184866 with the Employment Appeals Board (EAB). On March 16, 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 February 15, 2022 application for review of Order No. 22-UI-184866.

HISTORIA PROCESAL: *El 6 de octubre de 2021, el Departamento de Empleo de Oregon (el Departamento) envió notificación de una decisión administrativa concluyendo que el reclamante no estaba activamente en busca de un trabajo desde el 5 de septiembre 2021 hasta el 11 de septiembre de 2021 (semana 36-21) y por esa razón no era elegible de recibir beneficios de desempleo para esa semana (decisión # 74343). Decisión # 74343 se convirtió en final el 26 de octubre de 2021 sin que el reclamante hubiera presentado una aplicación para una audiencia. El 15 de noviembre de 2021, el reclamante presentó una aplicación tardía para una audiencia. La Jueza Administrativa Kangas revisó la aplicación tardía del reclamante y el 26 de enero de 2022, emitió la Orden No. 22-UI-184866 rechazando la aplicación del reclamante porque la aplicación era tarde. La orden también dio al reclamante la oportunidad de responder a un cuestionario antes del 9 de febrero de 2022 sobre por qué el reclamante presentó su aplicación tarde. El 15 de febrero de 2022, el reclamante presentó una respuesta tardía al cuestionario y una aplicación oportuna de revisión de la Orden No. 22-UI-184866 a La Junta de Apelaciones de Empleo (EAB). El 16 de marzo de 2022, la Jueza Administrativa Kangas envió por correo una carta indicando que la Oficina de Audiencias Administrativas (OAH) no*

consideraría la respuesta del reclamante al cuestionario ni emitiría otra orden con respecto a la decisión # 74343 porque la respuesta al cuestionario era tarde. Este asunto se presenta ante la EAB basándose en la aplicación de revisión de la Orden No. 22-UI-184866 que el reclamante presentó el 15 de febrero de 2022.

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.

FINDING OF FACT: (1) On October 6, 2021, the Department mailed claimant decision # 74343. 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 July 28, 2021." . . . "Usted tiene el derecho de apelar esta decisión si usted no cree que sea correcta. Su solicitud de apelación debe ser recibida a más tardar el 26 de octubre de 2021." Exhibit 1 at 2. Decision # 74343 also stated, "If you do not understand this decision, contact the Unemployment Insurance Center [on the decision] immediately. Si usted no entiende esta decisión, comuníquese con el Centro de Desempleo indicado [en la decisión] inmediatamente." Exhibit 1 at 1. The decision also provided a mailing address, two telephone numbers, and a fax number for use in contacting the Department. Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Claimant's late request for hearing is dismissed. *La aplicación tardía para una audiencia del reclamante es rechazada.*

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. There is a presumption that a letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(1)(q).

On October 6, 2021, the Department mailed decision # 74343 to claimant at claimant's address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on that decision was October 26, 2021. Claimant did not file a request for hearing on decision # 74343 until November 15, 2021. Accordingly, claimant's request for hearing was late.

The record, including claimant's response to the appellant questionnaire, does not show that claimant had good cause to extend the October 26, 2021 deadline to file their request for hearing. Claimant's appellant questionnaire response states that claimant received decision # 74343 on February 4, 2022, which is presumed to be incorrect and refer instead to when claimant received Order No. 22-UI-184866 (issued on January 26, 2022). EAB Exhibit 1 at 1. Claimant's response does not otherwise show when claimant received decision # 74343. It is therefore presumed that claimant received the decision in the regular course of the mail, and not after the 20-day deadline for claimant to file a timely request for

hearing. ORS 40.135(1)(q). Claimant asserted on their appellant questionnaire response that they “deserve to have my rights as worker respected.” EAB Exhibit 1 at 2. This statement does not establish that claimant had good cause to extend the deadline to request a hearing because it does not show that a factor beyond claimant’s reasonable control prevented them from exercising their right to request a hearing by the October 26, 2021 deadline.

Although claimant’s failure to file their hearing request by the October 26, 2021 deadline was likely the result of a mistake on claimant’s part, the record does not show that claimant filed their request for hearing late due to an “excusable mistake” within the meaning of the administrative rules because the record does not show that any mistake on claimant’s part, for example, raised a due process issue, was the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Therefore, claimant’s late request for hearing on decision # 74343 is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 22-UI-184866 is affirmed. *La Orden de la Audiencia 22-UI-184866 queda confirmada.*

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

DATE of Service: March 23, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.

NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Puede acceder a la encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.