

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0345

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On September 15, 2021, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report concluding claimant did not qualify for unemployment insurance benefits because they had not earned at least six times their weekly benefit amount since the beginning date of their previous unemployment claim. On September 25, 2021, the September 15, 2021 administrative decision became final without claimant having filed a request for hearing. On November 2, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on January 7, 2022 issued Order No. 22-UI-183541, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 21, 2022. On January 24, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-183541 with the Employment Appeals Board (EAB). On March 17, 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 January 24, 2022 application for review of Order No. 22-UI-183541.

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 supporting documents that they included with that response, 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 September 15, 2021, the Department mailed the September 15, 2021 administrative decision to claimant's address on file with the Department. The September 15, 2021 administrative decision stated, "This report becomes final unless you request redetermination of the report or request a hearing within 10 days." Exhibit 1.

CONCLUSIONS AND REASONS: Claimant's late request for hearing is dismissed.

ORS 657.266 provides that the Department's initial determination of eligibility and amount of benefits becomes final unless a party files a request for hearing within 10 days after the date the decision is mailed. ORS 657.875 provides that the 10-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).

The Department mailed the September 15, 2021 administrative decision to claimant at their address of record on September 15, 2021. The 10-day deadline for claimant to file a timely request for hearing was September 25, 2021. Claimant did not file their request for hearing until November 2, 2021. As such, claimant's request for hearing was late.

Claimant did not indicate in the appellant questionnaire response when they received a copy of the September 15, 2021 administrative decision. In response to a question asking when they received the September 15, 2021 administrative decision, claimant responded that they received "this information" on January 14, 2022 and that they were "not sure of any others." EAB Exhibit 1 at 1. It is inferred from claimant's response that the "information" they received on January 14, 2022 was a copy of Order No. 22-UI-183541, and that their statement that they were "not sure of any others" meant that they do not know when they received a copy of the September 15, 2021 administrative decision. As such, claimant is presumed to have received the September 15, 2021 administrative decision in the regular course of the mail pursuant to ORS 40.135(1)(q). Claimant's supporting documents, which consist of correspondence mailed by the Department to claimant between September 16, 2021 and October 12, 2021, support this presumption as they show that claimant received these documents during the same timeframe and at the same mailing address where the Department mailed the September 15, 2021 administrative decision. EAB Exhibit 1 at 3-5.

Claimant stated that they did not file a request for hearing until November 2, 2021 because prior to this date they "believed" they had been approved by the Department to receive benefits and would be receiving payment for each week of benefits they claimed after their waiting week. EAB Exhibit 1 at 2. However, claimant's response to the appellant questionnaire shows that their failure to file a timely request for hearing was not due to factors or circumstances beyond their reasonable control, but their own mistake in thinking that they didn't need to request a hearing because they had been approved for benefits. And although claimant's failure to file a timely request for hearing was a mistake, they failed to show that it was an "excusable" mistake that, for example, raises a due process issue, or was the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Claimant has therefore failed to establish good cause to extend the filing deadline beyond September 25, 2021 and their late request for hearing on the September 15, 2021 administrative decision is dismissed.

DECISION: Order No. 22-UI-183541 is affirmed.

S. Alba and A. Steger-Bentz;
D. Hettle, 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.

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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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