

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0351

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On July 12, 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 therefore was ineligible to receive unemployment insurance benefits for the week of June 13, 2021 through June 19, 2021 (week 24-21) and until the reason for the denial had ended. On July 15, 2021, the Department served notice of an administrative decision concluding that claimant filed a late claim for unemployment insurance benefits for the week of June 6, 2021 through June 12, 2021 (week 23-21) and therefore was ineligible to receive benefits for that week (decision # 103047). Also on July 15, 2021, the Department served notice of an administrative decision concluding that claimant filed a late claim for unemployment insurance benefits for the week of June 20, 2021 through June 26, 2021 (week 25-21) and therefore was ineligible to receive benefits for that week (decision # 111405). On August 2, 2021, the July 12, 2021 administrative decision became final without claimant having filed a request for hearing. On August 4, 2021, decisions # 103047 and 111405 became final without claimant having filed a request for hearing. On October 11, 2021, claimant filed late requests for hearing on the July 12, 2021 administrative decision and decisions # 103047 and 111405.

ALJ Kangas considered claimant's requests, and on January 5, 2022 issued Orders No. 22-UI-183276, 22-UI-183274, and 22-UI-183280, dismissing claimant's requests for hearing on the July 12, 2021 administrative decision and decisions # 103047 and 111405, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by January 19, 2022. On January 25, 2022, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 22-UI-183276, 22-UI-183274, and 22-UI-183280 with the Employment Appeals Board (EAB). On March 15, 2022, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue additional orders regarding these matters because the questionnaire response was late. This matter comes before EAB based upon claimant's January 25, 2022 applications for review of Orders No. 22-UI-183276, 22-UI-183274, and 22-UI-183280.

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 January 25, 2022 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.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-183276, 22-UI-183274, and 22-UI-183280. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2022-EAB-0352, 2022-EAB-0351, and 2022-EAB-0353).

FINDINGS OF FACT: (1) On July 12, 2021, the Department mailed the July 12, 2021 administrative decision to claimant's address on file with the Department. The July 12, 2021 administrative 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 08/02/2021." Exhibit 1 at 1 (Order No. 22-UI-183276).

(2) On July 15, 2021, the Department mailed decision # 103047 to claimant's address on file with the Department. Decision # 103047 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 August 4, 2021." Exhibit 1 at 2 (Order No. 22-UI-183274).

(3) On July 15, 2021, the Department mailed decision # 111405 to claimant's address on file with the Department. Decision # 111405 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 August 4, 2021." Exhibit 1 at 2 (Order No. 22-UI-183280).

CONCLUSIONS AND REASONS: Claimant's late requests for hearing 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 12, 2021 administrative decision was due by August 2, 2021. The requests for hearing on decisions # 103047 and 111405 were due by August 4, 2021. Because claimant did not file their requests for hearing on the three administrative decisions until October 11, 2021, the requests were late. On their appellant questionnaire response, claimant indicated that they were "unsure" of when they received the administrative decisions, but suggested that it occurred in "late 2021 (December)." EAB Exhibit 1 at 1. It does not appear from claimant's response here that they intended to refer to their receipt of any of the administrative decisions issued in July 2021, as they filed their requests for hearing on those decisions in October 2021, two months before they claimed to have

received the decisions themselves. Because claimant's response does not show when they received the three administrative decisions, it is presumed that they received them in the regular course of mail.¹ Claimant's response does not suggest that they did not receive the administrative decisions prior to the hearing request deadlines, which might otherwise have constituted a factor beyond claimant's reasonable control.

Neither does their response indicate that they were unable to meet the deadlines due to other factors beyond their control. Claimant stated that they believed that they had good cause to file the requests for hearing late because of "incarceration as well as conflicting information received by UI agents." EAB Exhibit 1 at 2. However, a note in the Department's claims system from September 12, 2021 indicates that claimant informed a representative from the Department that claimant had been incarcerated from August 20, 2021 through August 26, 2021.² Because claimant's period of incarceration occurred after the hearing request deadlines had already passed, claimant's explanation here does not show that they were unable to file timely requests for hearing due to factors beyond their control.

Additionally, claimant further stated that they "had filed prior to [the hearing request deadlines] + made multiple attempts over the phone to check on status," that they had "started the appeal process this summer," and that they could have met the deadlines if they had "received better clarification on the process at an earlier date when the weeks were initially denied." EAB Exhibit 1 at 2. To the extent claimant suggested in these statements that they filed requests for hearing earlier than October 11, 2021, the record does not support the conclusion that they actually filed *timely* requests for hearing. Claimant did not indicate when in the summer of 2021 they "started the appeal process," and the record contains no other indication that claimant met the hearing request deadlines. To the extent that claimant suggested in their statement that their failure to meet the hearing request deadlines was the result of a misunderstanding of the appeal process, they have not provided sufficient information here to show that they detrimentally relied on inaccurate information given to them by the Department, and that such information was the cause of their failure to file timely requests for hearing.

Although claimant's failure to file timely requests for hearing was likely the result of a mistake on claimant's part, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Therefore, claimant's late requests for hearing on the July 12, 2021 administrative decision and decisions # 103047 and 111405 are subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Orders No. 22-UI-183276, 22-UI-183274, and 22-UI-183280 are affirmed.

¹ 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).

² EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

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

DATE of Service: March 25, 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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