

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0358

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On January 15, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work or available for work during the week of December 13, 2020 through December 19, 2020 (week 51-20), and therefore was denied benefits for that week (decision # 75039). On February 4, 2021, decision # 75039 became final without claimant having filed a request for hearing. On January 27, 2022, claimant filed a late request for hearing on decision # 75039. On February 23, 2022, ALJ Murdock conducted a hearing at which the employer failed to appear, and on February 25, 2022 issued Order No. 22-UI-187285, dismissing claimant's request for hearing as late without good cause, leaving decision # 75039 undisturbed. On March 10, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) On January 15, 2021, the Department mailed decision # 75039 to claimant's address on file with the Department. Decision # 75039 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 February 4, 2021." Exhibit 1 at 2.

(2) The copy of decision # 75039 mailed to claimant on January 15, 2021 was not returned to the Department as undeliverable. The Department mailed several additional documents to claimant at her address of record in 2021 and 2022. These included additional administrative decisions, including a decision assessing an overpayment of benefits mailed on November 18, 2021, and a billing statement

relating to the overpayment mailed in January 2022. None of those documents were returned to the Department as undeliverable.

(3) Claimant has received mail at her current address of record—the same address where decision # 75039 was sent—since at least November 2020.

(4) On January 27, 2022, claimant submitted a late request for hearing on decision # 75039 via a form on the Department's website.

CONCLUSIONS AND REASONS: Claimant's late request for hearing is 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. Good cause for filing a late request for hearing does not include not understanding the implications of a decision or notice when it is received. OAR 471-040-0010(b)(B).

The request for hearing on decision # 75039 was due by February 4, 2021. Because claimant did not file her request until January 27, 2022, the request was late. At hearing, claimant initially testified that she had received decision # 75039 in the mail within a few days of when it was mailed, that she disagreed with it and understood that she could appeal it, and that she then called the Department to discuss the matter. Transcript at 11. However, the Department's representative testified that the Department had no record of claimant having contacted them during the timely appeal period for decision # 75039. Transcript at 5. Claimant then testified that she had been referring to her receipt of either another administrative decision (regarding an overpayment of benefits) or a billing statement, rather than decision # 75039, and that she did not receive decision # 75039. Transcript at 12–13. Claimant then referred to a document, dated January 15, 2021, which she was reviewing during her testimony. Transcript at 16. Nor is it clear whether claimant was referring to decision # 75039, or another document with the same date of mailing, during her testimony.

From claimant's testimony and the evidence provided by the Department, it is not clear whether, or when, claimant actually received decision # 75039. In the absence of clear evidence to the contrary, it is presumed that claimant received decision # 75039 in the regular course of mail.¹ Therefore, the record shows that claimant timely received decision # 75039, but did not understand its implications, or forgot about it, and then later appealed it when she learned of either the subsequent overpayment decision or the billing statement issued for that decision. As such, the record fails to show that claimant's failure to file a timely request for hearing was due to factors beyond her reasonable control. Additionally, to the extent that claimant might have filed the request for hearing late because she timely received decision # 75039 but did not understand its implications, claimant did not have good cause for filing the late request for hearing under OAR 471-040-0010(b)(B).

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).

Likewise, although claimant's failure to meet the deadline for filing a timely request for hearing on decision # 75039 was likely the result of a mistake on claimant's part, it likely was not an "excusable mistake" within the meaning of the administrative rules because it likely 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. Claimant's late request for hearing on decision # 75039 therefore is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 22-UI-187285 is affirmed.

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

DATE of Service: April 19, 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.



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 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.

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.