

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0390

Reversed & Remanded ~ Revocada y Remitida Para Una Audiencia

PROCEDURAL HISTORY AND FINDINGS OF FACT: On November 22, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work during the weeks from October 24, 2021 through November 13, 2021 (weeks 43-21 through 45-21) and therefore was not eligible to receive unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 132511). On December 13, 2021, decision # 132511 became final without claimant having filed a request for hearing. On December 28, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on January 25, 2022 issued Order No. 22-UI-184732, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 8, 2022. On February 9, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-184732 with the Employment Appeals Board (EAB). On March 21, 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 the questionnaire response was late. This matter comes before EAB based upon claimant's February 9, 2022 application for review of Order No. 22-UI-184732.

HISTORIA PROCESAL Y HECHOS: *El 22 de noviembre de 2021, el Departamento de Empleo de Oregón (el Departamento) envió notificación de una decisión administrativa concluyendo que la reclamante no estaba capaz de trabajar desde el 24 de octubre de 2021 hasta el 13 de noviembre de 2021 (semanas 43-21 hasta 45-21) y por esa razón no era elegible de recibir beneficios de desempleo para esas semanas (decisión # 132511). Decisión # 132511 se convirtió en final el 13 de diciembre de 2021 sin que la reclamante hubiera presentado una aplicación para una audiencia. El 28 de diciembre de 2021, la reclamante presentó una aplicación tardía para una audiencia. La Jueza Administrativa Kangas revisó la aplicación tardía de la reclamante, y el 25 de enero de 2022, emitió la Orden No. 22-UI-184732 rechazando la aplicación de la reclamante porque la aplicación era tarde. La orden también dio a la reclamante la oportunidad de responder a un cuestionario antes del 8 de febrero de 2022 sobre por qué la reclamante presentó su aplicación tarde. El 9 de febrero de 2022, la reclamante presentó una respuesta tardía al cuestionario y una aplicación oportuna de revisión de la Orden No. 22-UI-184732 a La Junta de Apelaciones de Empleo (EAB). El 21 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 de la reclamante al cuestionario ni emitiría otra orden con respecto a la decisión # 132511 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-184732 que la reclamante presentó el 9 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 is claimant’s response to the appellant questionnaire, marked as EAB Exhibit 1, a copy of which has been 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.

ASUNTO DE PRUEBAS: *EAB ha considerado evidencia adicional para tomar esta decisión de acuerdo con OAR 471-041-0090(1) (13 de mayo de 2019). La evidencia adicional es la respuesta tardía al cuestionario de la reclamante y ha sido marcada como EAB Exhibit 1, y se le ha dado una copia a las partes con esta decisión. Cualquier parte que se oponga a la admisión de EAB Exhibit 1 tiene que someter su objeción a esta oficina por escrito, y tiene que incluir la base de su objeción, entre diez días de cuando esta decisión fue enviada. OAR 471-041-0090(2). A menos que su objeción sea recibida y afirmada, el hecho reconocido permanecerá en el expediente.*

CONCLUSIONS AND REASONS: Order No. 22-UI-184732 is reversed and remanded for a hearing on whether claimant’s late request for hearing on decision # 132511 should be allowed and, if so, the merits of that decision.

CONCLUSIONES Y RAZONES: *La Orden No. 22-UI-184732 se pone a un lado, y esta materia se remite para una audiencia para determinar si se permitirá la aplicación tardía para una audiencia sobre la decisión # 132511, y si se permite, entonces una audiencia sobre el mérito de la decisión.*

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.

In her response to the appellant questionnaire, claimant indicates that she may have filed a request for hearing before December 28, 2021. That request may have been a timely request for hearing, or may have been a late request for hearing before December 28, 2021. Department records show claimant contacted the Department and requested a hearing by telephone on December 28, 2021.¹ Claimant’s

¹ EAB has taken notice of fact, which is contained in Employment Department records. OAR 471-041-0090(1). 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.

response to the appellant questionnaire shows that on January 3, 2022, claimant contacted the Department and requested a hearing through their web page. EAB Exhibit 1. The questionnaire response also suggests that claimant may have contacted the Department by mail after the Department told claimant that her benefits were denied. EAB Exhibit 1. The record therefore shows claimant had multiple contacts with the Department at different times. Further inquiry is needed to determine when claimant received decision # 132511, when she contacted the Department regarding decision # 132511, the substance of what was stated during those contacts, and whether any of claimant's statements should have been construed as a request for hearing. The record should also be developed to determine when the factors that may have prevented a timely filing ceased to exist, and whether claimant made a request for hearing within a "reasonable time" after the circumstances that prevented a timely filing ceased to exist. Order No. 22-UI-184732 therefore is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 132511 should be allowed and, if so, the merits of that decision.

DECISION: Order No. 22-UI-184732 is set aside, and this matter remanded for further proceedings consistent with this order. *La Orden de la Audiencia 22-UI-184732 se pone a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*

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

DATE of Service: April 7, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-184732 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

NOTA: La falta de cualquier parte de presentarse a la audiencia sobre la remisión no reinstalará la Orden de la Audiencia No. 22-UI-184732, ni devolverá esta orden a la EAB. Solamente una aplicación oportuna para revisión de la orden subsiguiente de la nueva audiencia volverá este caso a la EAB.

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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.

EAB ha tomado aviso judicial de este hecho que es contenido en los expedientes del Departamento. OAR 471-041-0090(1). Cualquier parte que se oponga que el EAB haya tomado aviso judicial sobre esa información tiene que someter su objeción a esta oficina por escrito, y tiene que incluir la base de su objeción, entre diez días de cuando esta decisión fue enviada. OAR 471-041-0090(2). A menos que su objeción sea recibida y afirmada, el hecho reconocido permanecerá en el expediente.



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.

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