

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0560

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On May 8, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received regular unemployment insurance benefits to which she was not entitled, and assessing an overpayment of \$4,620 that claimant was required to repay to the Department (decision # 141506). On May 29, 2018, decision # 141506 became final without claimant having filed a request for hearing. On July 21, 2021, claimant filed a late request for hearing on decision # 141506. On April 27, 2022, ALJ Ramey conducted a hearing, and on May 5, 2022 issued Order No. 22-UI-193037, dismissing claimant's request for hearing as late without a showing of good cause, and leaving decision # 140506 undisturbed. On May 12, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument 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. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Around the end of April 2018, claimant moved to a new address and did not update her address with the Department. Around that time, claimant began experiencing symptoms of severe mental illness, including paranoia, hallucinations, and psychosis. Claimant was later diagnosed with schizophrenia. Claimant's illness prevented her from being able to function or care for herself, and claimant's father subsequently took over her care.

(2) On May 8, 2018, the Department mailed decision # 141506 to claimant's address on file with the Department, which at that point was claimant's prior address. Decision # 141506 stated, "If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before May 29, 2018 to be timely." Exhibit 1 at 3.

(3) Claimant did not receive decision # 141506 in the mail. On or prior to May 30, 2018, claimant's copy of decision # 141506 was returned to the Department as undeliverable. On May 30, 2018, a representative from the Department attempted unsuccessfully to reach claimant by phone, and left a voicemail requesting that claimant call them back. Claimant did not respond.

(4) In February 2019, the Department contacted claimant, informed her of decision # 141506, and explained how she could request a hearing. At that time, claimant was still suffering from severe mental illness and was unable to request a hearing.

(5) In February 2021, claimant's condition began to improve significantly, although she was still having difficulty functioning, and still experienced some paranoia and hallucinations. On February 5, 2021, claimant contacted the Department to update her address and phone number, and to inquire about the overpayment. At that time, the Department representative advised claimant how to request a hearing.

(6) On March 3, 2021, claimant contacted the Department twice, and requested information on how to file a late request for hearing, which the Department representative provided to her.

(7) In July 2021, claimant stopped experiencing paranoia and hallucinations.

(8) On July 7, 2021, claimant sent an email to the Department requesting a hearing on decision # 141506.

(9) On July 21, 2021, claimant contacted the Department via their website's contact form and requested a hearing on decision # 141506.

CONCLUSIONS AND REASONS: Claimant had good cause to file the late request for hearing. Order No. 22-UI-193037 is reversed and this matter remanded for a hearing on the merits of decision # 141506.

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 decision # 141506 was due by May 29, 2018. Because claimant did not file her request for hearing until July 2021, the request was late. As a preliminary matter, the order under review concluded that claimant's request for hearing filed July 21, 2021 was dismissed. Order No. 22-UI-193037 at 3. This date is consistent with the record, which shows that claimant did file a request for hearing, via the Department's web contact form, on July 21, 2021. Exhibit 1 at 1. However, claimant also testified at hearing that she filed a request for hearing with the Department via email on July 7, 2021. Transcript at 27. Although the record does not show why the Department did not receive, or process, this earlier request, the testimony is nevertheless uncontroverted. Therefore, the record shows that claimant first filed a request for hearing on decision # 141506 on July 7, 2021.

Claimant's delay in filing the request was the result of her having suffered a long period of severe mental illness which left her unable to care for herself. The order under review found that while this constituted a factor beyond her control which prevented her from filing a timely request for hearing, claimant did not file the request within a reasonable period of time from when the factor ceased to exist because she could have filed the request when she contacted the Department in February 2021. Order No. 22-UI-193037 at 3. The record does not support this conclusion.

At hearing, claimant testified that she had gotten "considerably better" by the time she contacted the Department in February 2021, and was "able to communicate again" at that time. Transcript at 19-20. However, claimant also testified that she was "still very sick" in February 2021, and that her hallucinations "probably officially ended around July of 2021," as she has not experienced any since then. Transcript at 20, 26. From this testimony, it is reasonable to conclude that claimant's mental illness continued to prevent her from being able to file a request for hearing during that time. Further, claimant's testimony that her hallucinations ended in July 2021 suggests that the factor which prevented her from filing a timely request ended in July 2021. Claimant did not give a specific date in July 2021 when the factor ceased. Even if they ceased on July 1, 2021, however, claimant's July 7, 2021 request for hearing would have been within seven days of when the factor ceased. Therefore, claimant filed the request within a reasonable time after the factor which prevented the timely filing ceased to exist.

For the above reasons, claimant had good cause for failing to file a timely request for hearing, and filed her late request for hearing within a reasonable time. Claimant's late request for hearing on decision # 141506 therefore is allowed, and claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 22-UI-193037 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 6, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-193037 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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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