

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0686

Reversed & Remanded

PROCEDURAL HISTORY: On December 17, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work, and therefore not eligible to receive unemployment insurance benefits, for the weeks including November 21, 2021 through December 4, 2021 (weeks 47-21 through 48-21) and until the reason for denial had ended (decision # 125445). On January 6, 2022, decision # 125445 became final without claimant having filed a request for hearing. On January 10, 2022, claimant filed a late request for hearing on decision # 125445.

ALJ Kangas considered claimant's request, and on April 11, 2022 issued Order No. 22-UI-191051, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 25, 2022. On April 27, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-191051 with the Employment Appeals Board (EAB). On June 9, 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 April 27, 2022 application for review of Order No. 22-UI-191051.

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 and a February 18, 2022 email from claimant to OAH, 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.

FINDINGS OF FACT: (1) Prior to January 9, 2022, claimant completed and submitted a change of address form with the United States Postal Service (USPS). Due to an error with the processing of the form, some of claimant's mail did not arrive at their new address until weeks later, and some of their mail was never received at all. Claimant did not receive decision # 125445.

(2) On January 9, 2022, claimant received a weekly claim denial letter from the Department.

(3) On January 10, 2022, claimant contacted the Department to ask why their benefits had been denied. Claimant was advised that they needed to request a hearing on decision # 125445. Claimant submitted their request for hearing the same day.

CONCLUSIONS AND REASONS: Order No. 22-UI-191051 is set aside and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 125445 should be allowed and, if so, the merits of that decision.

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.

On December 17, 2021, the Department mailed notice of decision # 125445 to claimant's address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on decision # 125445 was January 6, 2022. Claimant did not file a request for hearing on decision # 125445 until January 10, 2022. As such, claimant's request for hearing was late.

However, claimant's response to the appellant questionnaire and their February 18, 2022 email to OAH show that claimant may have had good cause to extend the 20-day deadline. Claimant asserted that during the timeframe when the Department mailed notice of decision # 125445, claimant had been experiencing "an issue" with the receipt of their mail which resulted from a processing problem related to claimant's attempt to change their address with USPS. EAB Exhibit 1 at 1. Claimant explained, "the addresses [on their change of address form] were reversed between new and old making some of [their] mail arrive weeks late and some correspondence wasn't received at all" EAB Exhibit 1 at 3. It is not clear from claimant's response whether claimant or the postal service was responsible for the reversal of the addresses that caused the processing problem. However, the record shows that while claimant did receive some mail at their new address, they never received decision # 125445. They did not learn of the decision's existence until January 10, 2022, when the filing deadline had already passed.

Claimant's inability to receive some of their mail may have been a circumstance beyond their reasonable control. On remand, further inquiry is therefore necessary to determine whether the processing issues with claimant's change of address form were due to a mistake made by claimant in completing the form, or whether the processing issues resulted from a mistake made by USPS. If it is determined that the processing issues were the result of USPS error, further inquiry should address whether such an error was a factor beyond claimant's reasonable control that caused them to file the request for hearing late. Conversely, if it is determined that the processing issues were the result of a mistake made by claimant, further inquiry should address whether any such mistake was an excusable mistake that caused them to file the request for hearing late.

Because further development of the record is necessary to determine whether claimant's late request for hearing on decision # 125445 should be allowed and, if so, the merits of that decision, Order No. 22-UI-191051 is reversed, and this matter is remanded.

DECISION: Order No. 22-UI-191051 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 30, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-191051 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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 الإستئناف 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.