

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0780

Affirmed
Late Application for Review Dismissed.

PROCEDURAL HISTORY: On February 4, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 81957). On February 24, 2021, decision # 81957 became final without the employer having filed a request for hearing. On March 2, 2021, the employer filed a late request for hearing. ALJ Kangas considered the employer's request, and on April 5, 2021 issued Order No. 21-UI-164124, dismissing the employer's request for hearing as late, subject to the employer's right to renew the request by responding to an appellant questionnaire by April 19, 2021. On April 20, 2021, the employer filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-164124 with the Employment Appeals Board (EAB). On July 14, 2022, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider the employer's questionnaire response or issue another order regarding this matter because the questionnaire response was late. This matter comes before EAB based upon the employer's April 20, 2021 application for review of Order No. 21-UI-164124.

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 the employer's late 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.

FINDINGS OF FACT: (1) On February 4, 2021, the Department mailed decision # 81957 to the employer's address on file with the Department, which is the address of the employer's Oregon branch. Decision # 81957 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 24, 2021." Exhibit 1 at 2.

(2) The employer received decision # 81957 at the employer's Oregon branch shortly after it was mailed. However, at the time the decision was received, the employer's president was away at the employer's Texas branch. While the president was away from Oregon, the employer's staff did not open the envelope decision # 81957 was mailed in and did not forward the decision to the president.

(3) On March 2, 2021, the president returned to the Oregon branch, opened the envelope decision # 81957 was mailed in, and faxed a request for hearing to OAH the same day.

CONCLUSIONS AND REASONS: The employer'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.

On February 4, 2021, the Department mailed decision # 81957 to the employer at the employer's address of record on file with the Department. The 20-day deadline for the employer to file a timely request for hearing on that decision was February 24, 2021. The employer did not file a request for hearing on decision # 81957 until March 2, 2021. Accordingly, the employer's request for hearing was late.

The employer did not establish that factors beyond their reasonable control prevented them from filing a timely hearing request. In their appellant questionnaire response, the employer explained that the reason the employer did not request the hearing by the deadline was because the employer's president was in Texas and the employer did not open the envelope decision # 81957 was mailed in and become aware of the decision until March 2, 2021 when the president returned to Oregon. EAB Exhibit 1 at 1-2. The record on review indicates that the employer received decision # 81957 at their Oregon branch shortly after it was mailed, however, and the employer failed to show why a staff member could not have opened the decision, become aware of its contents, and then prompted the employer to file an appeal by the March 2, 2021 deadline. Because someone other than the employer's president could have opened and reviewed the employer's mail and ensured that the employer timely appealed any administrative decision the employer disagreed with, the employer failed to show that the president's absence from Oregon until March 2, 2021 was a factor beyond the employer's reasonable control that prevented them from filing a timely hearing request.

To the extent that the employer's failure to file a timely hearing request was the result of a mistake on the employer's part, the employer did not show that the mistake was an "excusable mistake" within the meaning of the administrative rules. The record does not, for example, raise a due process issue, and fails to show that any mistake was the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Because the employer failed to show that factors beyond their reasonable control or an excusable mistake prevented them from filing a hearing request on decision # 81957 by the February 24, 2021 deadline, they failed to establish good cause to extend the filing deadline beyond that date. Therefore,

the employer's late request for hearing on decision # 81957 is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 21-UI-164124 is affirmed.

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

DATE of Service: July 22, 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 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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