

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0807

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On December 30, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work during the week of December 19, 2021 through December 25, 2021 (week 51-21) and was therefore ineligible to receive unemployment insurance benefits during that week (decision # 131733). Also on December 30, 2021, the Department served notice of an administrative decision concluding that claimant was not able to work during week 51-21 and was therefore ineligible to receive benefits for that week and until the reason for the denial had ended (decision # 131152). On January 19, 2022, decisions # 131733 and 131152 became final without claimant having filed requests for hearing. On January 27, 2022, claimant filed late requests for hearing on decisions # 131733 and 131152.

ALJ Kangas considered claimant's request, and on April 26, 2022 issued Orders No. 22-UI-192254 and 22-UI-192255, dismissing claimant's requests for hearing as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by May 10, 2022. On April 29, 2022, claimant filed a timely response to the appellant questionnaire. ALJ Kangas reviewed claimant's questionnaire responses, and on July 14, 2022 issued Orders No. 22-UI-198275 and 22-UI-198277, canceling Orders No. 22-UI-192254 and 22-UI-192255, re-dismissing claimant's requests for hearing on decisions # 131733 and 131152 as late without showings of good cause, and leaving those administrative decisions undisturbed. On July 18, 2022, claimant filed applications for review of Order No. 22-UI-198275 and 22-UI-198277 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-198275 and 22-UI-198277. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0807 and 2022-EAB-0808).

FINDINGS OF FACT: (1) On December 30, 2021, the Department mailed decision # 131733 to claimant's address on file with the Department. Decision # 131733 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 January 19, 2022.” Order No. 22-UI-198275, Exhibit 1 at 2.

(2) On December 30, 2021, the Department mailed decision # 131152 to claimant’s address on file with the Department. Decision # 131152 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 January 19, 2022.” Order No. 22-UI-198277, Exhibit 1 at 2.

(3) On January 4, 2022, claimant contacted the Department about having been denied benefits. In regards to that contact, the comment in the Department’s claim system stated:

PTC CLMT HAS QUESTION ABOUT DENIAL. EXPLAINED. CLMT NOT HAPPY.
EXPLAINED CLMT CAN APPEAL THE DECISION. CLMT HANG UP THE PHONE[.]¹

(4) On January 13, 2022, claimant again contacted the Department regarding the denials of benefits. In regards to that contact, the comment in the Department’s claim system stated, in relevant part:

PTC CLMNT DOESN'T UNDERSTAND REASON FOR DENIALS, SAYS ABLE TO WORK NIGHTS[.]²

(5) On January 27, 2022, claimant filed requests for hearing on decisions # 131733 and 131152.

CONCLUSIONS AND REASONS: Claimant’s late requests for hearing are 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. Under OAR 471-040-0010(1)(b)(B), “good cause” does not include not understanding the implications of a decision or notice when it is received.

The requests for hearing on decisions # 131733 and 131152 were due by January 19, 2022. Because claimant did not file their requests for hearing until January 27, 2022, the requests were late. On their

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). 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.

² EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). 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.

appellant questionnaire response, claimant indicated that they did not know why they did not file the requests for hearing prior to January 19, 2022. Order No. 22-UI-198275, Exhibit 3 at 6; Order No. 22-UI-198277, Exhibit 3 at 6. In response to the question asking what prompted them to file the hearing requests on the day that they did, claimant stated, “Just got in mail[.]” Order No. 22-UI-198275, Exhibit 3 at 6; Order No. 22-UI-198277, Exhibit 3 at 6.

It is not clear from claimant’s appellant questionnaire response when they received decisions # 131733 and 131152, or what they received in the mail that prompted them to file the requests for hearing on January 27, 2021. However, the record shows that claimant contacted the Department on two occasions prior to the timely filing deadline, that they did not understand the basis for the denials of benefits, and that they were specifically advised that they could appeal. These contacts suggest that claimant had received decisions # 131733 and 131152 well in advance of the timely filing deadlines. Claimant has not offered any explanations that show that they were unable to file the requests for hearing prior to those deadlines due to factors beyond their control. Rather, claimant’s contacts on January 4, 2022 and January 13, 2022 suggest that they simply did not understand the basis for the denials. Under OAR 471-040-0010(1)(b)(B), not understanding the implications of a decision or notice when it is received does not constitute good cause for filing a late request for hearing.

Further, although claimant’s delay in filing the requests for hearing due to misunderstanding the reasons for the denials was likely the result of a mistake on claimant’s part, it was not an “excusable mistake” within the meaning of the administrative rules because it 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.

Therefore, claimant’s late requests for hearing on decisions # 131733 and 131152 are subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Orders No. 22-UI-198275 and 22-UI-198277 are affirmed.

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

DATE of Service: September 16, 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 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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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.