

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0846

Reversed & Remanded

PROCEDURAL HISTORY: On October 7, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was disqualified from receiving unemployment insurance benefits effective August 22, 2021 (decision # 101156). On October 27, 2021, decision # 101156 became final without claimant having filed a request for hearing. On January 31, 2022, claimant filed a late request for hearing on decision # 101156.

ALJ Kangas considered claimant's request, and on April 27, 2022 issued Order No. 22-UI-192382, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 11, 2022. On May 12, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-192382 with the Employment Appeals Board (EAB). On August 2, 2022, ALJ Kangas mailed a letter stating that because claimant's response to the appellant questionnaire was late, it would not be considered, another order would not be issued, and Order No. 22-UI-192382 remained in effect. This matter comes before EAB based upon claimant's May 12, 2022 application for review of Order No. 22-UI-192382.

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 which 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 October 7, 2021, the Department mailed decision # 101156 to claimant's address on file with the Department. The decision stated, in relevant part, "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 October 27, 2021." Exhibit 1 at 2.

(2) On January 31, 2022, claimant filed a late request for hearing on decision # 101156.

CONCLUSIONS AND REASONS: Order No. 22-UI-192382 is set aside and this matter remanded for further development of the record.

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 October 7, 2021, the Department mailed decision # 101156 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 # 101156 was October 27, 2021. Claimant did not file a request for hearing on decision # 101156 until January 31, 2022. As such, claimant's request for hearing was late.

Claimant submitted an appellant questionnaire response in which claimant purports to explain, in relevant part: (1) why he did not file a request for hearing prior to the October 27, 2021 deadline for doing so, (2) what, if anything, he could have done to meet the deadline, (3) what prompted him to file his request for hearing on January 31, 2022, and (4) why he believes he has good cause for filing his request for hearing late. EAB Exhibit 1 at 2. However, each of claimant's explanations on the appellant questionnaire response are illegible, likely due to the way they were scanned. EAB Exhibit 1 at 2. As such, the record is incomplete and it is not possible for EAB to determine whether claimant has shown good cause to extend the 20-day hearing request deadline. Under these circumstances, fundamental considerations of fairness and due process require that claimant be provided another opportunity to present his request. Order No. 22-UI-192382 must therefore be reversed as unsupported by a complete record, and the case remanded. On remand, inquiry should address whether claimant had good cause to extend the October 27, 2021 deadline a reasonable time. If, after a full and fair inquiry on the issue, it is determined that claimant did have good cause to extend the October 27, 2021 deadline, an inquiry into the merits of decision # 101156 should be conducted.

Because further development of the record is necessary to determine whether claimant's late request for hearing on decision # 101156 should be allowed and, if so, the merits of that decision, Order No. 22-UI-192382 is reversed, and this matter is remanded.

DECISION: Order No. 22-UI-192382 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: August 5, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-192382 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 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.

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