

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0919

Modified
Request to Reopen Allowed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On October 22, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving benefits effective May 17, 2020 (decision # 91804). On November 11, 2020, decision # 91804 became final without claimant having filed a request for a hearing. On November 19, 2020, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on December 31, 2020 issued order 20-UI-158465, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 14, 2021. On January 12, 2021, claimant filed a timely response to the appellant questionnaire. On February 3, 2021, the Office of Administrative Hearings (OAH) mailed a letter to claimant stating that Order 20-UI-158465 was vacated and a hearing would be scheduled to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 91804 .

On July 1, 2021, the Office of Administrative Hearings (OAH) served notice that the hearing was scheduled for July 12, 2021. On July 12, 2021, claimant failed to appear at the hearing, and on July 13, 2021 ALJ Mott issued Order No. 21-UI-170212, dismissing claimant's request for hearing for failing to appear. On July 16, 2021, claimant filed an application for review of Order No. 21-UI-170212 that OAH treated as a request to reopen the July 12, 2021 hearing. On August 1, 2022, ALJ Smith conducted a hearing, and on August 11, 2022 issued Order 22-UI-200312, granting claimant's request to reopen the July 12, 2021 hearing but denying claimant's late request for hearing on decision # 91804. On August 31, 2022, claimant filed an application for review of Order 22-UI-200312 with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's request to reopen the July 12, 2021 hearing is **adopted**. The remainder of this decision addresses whether claimant's late request for hearing on decision # 91804 also should be allowed.

FINDINGS OF FACT: (1) On October 22, 2020, the Department mailed decision # 91804 to claimant's address of record, which is where claimant was residing at all relevant times. However, claimant did not receive decision # 91804 in the mail.

(2) Claimant continued to file for benefits online, and when doing so, he received notification that his benefits would not be paid because of a disqualifying administrative decision. Claimant received this notification on October 24, November 9, and November 16, 2020. After receiving these notifications, claimant discussed the matter with friends and family and determined he needed to file an appeal.

(3) On November 19, 2020, claimant filed a request for hearing. At the time that he requested the hearing, claimant still had not received decision # 91804 in the mail.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 91804 is allowed. Claimant is entitled to a hearing on the merits of decision # 91804.

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 order under review dismissed claimant's late request for hearing on decision # 91804 because it concluded that claimant was sufficiently notified of the need to file a request for a hearing when he attempted to file online and was notified of an adverse administrative decision preventing the department from paying benefits. Order 22-UI-200312 at 5. The record does not support this conclusion.

Claimant did not receive decision # 91804 in the mail. Instead, when claimant attempted to file his weekly claims he received a message stating that the claim would not be paid because of a disqualifying decision. The record fails to show that these online notifications informed claimant that he had appeal rights, how to exercise any such appeals rights, or of a deadline for filing an appeal. Claimant testified that he only determined he needed to file an appeal through "doing some detective work" and discussing the matter with individuals that had prior interactions with the Department. Transcript at 16. Because claimant did not receive the administrative decision in the mail and apparently was unaware of the filing deadline, his failure to file a timely request for hearing was due to circumstances beyond his reasonable control. Further, this filing occurred within a reasonable time because the factor that prevented claimant from timely filing, having not received decision # 91804, still existed at the time that claimant filed his request for a hearing. Claimant's late request for hearing therefore is allowed, and claimant is entitled to a hearing on the merits of decision # 91804.

DECISION: Order No. 22-UI-200312 is modified and remanded, as outlined above.

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

DATE of Service: November 17, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-200312 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

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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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