

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1035

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On December 8, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was overpaid \$1,800 in Lost Wages Assistance benefits that he must repay to the Department (decision # 0560655). On December 28, 2021, decision # 0560655 became final without claimant having filed a request for hearing. On March 17, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on June 23, 2022 issued Order No. 22-UI-196678, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 7, 2022. On July 8, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-196678 with the Employment Appeals Board (EAB). On October 19, 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 July 8, 2022 application for review of Order No. 22-UI-196678.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the appellant questionnaire response claimant provided with their application for review, 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 December 8, 2021, the Department mailed decision # 0560655 to claimant's address on file with the Department. Decision # 0560655 was delivered to claimant in the regular course of the mail. Decision # 0560655 stated, "You have the right to appeal this decision if you believe it is wrong. Your request for appeal must be received no later than December 28, 2021." Exhibit 1 at 1. Decision # 0560655 also included a P.O. Box address, two telephone numbers, and two fax numbers for use in contacting the Department. Exhibit 1 at 1.

(2) On December 24, 2021, claimant returned from vacation and discovered decision # 0560655 in their mail. Claimant did not request a hearing on decision # 0560655 because they found the administrative decision to be “very confusing,” they were worried that it might be “a scam,” and they felt they should have received “a certified letter for something this important.” EAB Exhibit 1 at 2.

(3) On or shortly before March 17, 2022, claimant received a letter from the Department that stated claimant “would have wages garnished if [they] didn’t pay immediately or set up a payment plan.” EAB Exhibit 1 at 2. On March 17, 2022, claimant filed a late request for hearing on decision # 0560655.

CONCLUSIONS AND REASONS: Claimant’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. “Good cause” does not include not understanding the implications of a decision when it is received. OAR 471-040-0010(1)(b)(B).

The request for hearing on decision # 0560655 was due by December 28, 2021. Because claimant did not file their request for hearing until March 17, 2022, the request was late.

Claimant failed to establish good cause to extend the deadline to request a hearing on decision # 0560655. The record on review shows that claimant became aware of the decision on December 24, 2021, which was several days before the December 28, 2021 deadline to appeal decision # 0560655. Although claimant received the decision in the mail with time to appeal, they did not do so until March 17, 2022 because they found the administrative decision to be confusing, they were worried that it might be a scam, and they felt they should have received “a certified letter for something this important.” None of these reasons constituted factors beyond claimant’s reasonable control that prevented a timely filing. To the extent claimant found decision # 0560655 to be confusing, the fact that claimant was confused about the decision does not provide good cause because under OAR 471-040-0010(1)(b)(B), good cause does not include not understanding the implications of a decision when it is received. Nor did claimant’s concerns that the decision might be a scam or too important to send by regular mail amount to factors beyond claimant’s control that prevented a timely filing. If claimant questioned the authenticity of the decision, claimant was free to contact the Department to verify the decision via one of the contact methods included on decision # 0560655, such as one of the telephone numbers, and then request a hearing by December 28, 2021.

Likewise, although claimant’s failure to file a timely hearing request based on confusion about decision # 0560655 and concerns about its authenticity was likely the result of a mistake on claimant’s part, it was not an “excusable mistake” within the meaning of the administrative rules. Claimant’s mistake did not amount to an excusable mistake 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.

Because claimant failed to show that factors beyond their reasonable control or an excusable mistake prevented them from filing a hearing request on decision # 0560655 by the December 28, 2021 deadline, claimant failed to establish good cause to extend the filing deadline beyond that date. Accordingly, claimant's late request for hearing is dismissed.

DECISION: Order No. 22-UI-196678 is affirmed.

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

DATE of Service: October 25, 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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