

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1178

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On December 6, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective December 6, 2020 (decision # 103104). On December 27, 2021, decision # 103104 became final without claimant having filed a request for hearing. On July 6, 2022, claimant filed a late request for hearing. On November 15, 2022, ALJ Amesbury conducted a hearing, and on November 16, 2022 issued Order No. 22-UI-207438, dismissing claimant's late request for hearing as late without good cause. On November 28, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On May, 4, 2020, claimant filed her initial claim for benefits. The last week that she filed a continuing claim for benefits was shortly after the week of August 22, 2021 through August 28, 2021 (week 34-21).

(2) On December 6, 2021, the Department mailed decision # 103104 to claimant's address on file with the Department. On December 27, 2021, decision #103104 became final.

(3) Claimant's permanent residence is in Dallas, Oregon. However, claimant typically resides in Quartzsite, Arizona between the months of October and April. Claimant was residing in Quartzsite when the administrative decision was mailed. When she is residing in Quartzsite, claimant has her mail forwarded from her residence in Oregon. Claimant also has a friend retrieve any mail that is not

forwarded to Quartzsite and contact her regarding it. Despite these steps, claimant routinely fails to receive mail at her Quartzsite residence because of issues with the local post office.

(4) While residing in Quartzsite in 2021, claimant did not update her address with the Department because she did not believe she had any further business with them. Transcript at 22. Claimant did not receive decision # 103104 at her residence in Quartzsite, Arizona and her friend never collected decision # 103014 from her Oregon residence.

(5) On June 17, 2022, the department mailed claimant an administrative decision assessment overpayment. In June 2022, claimant received the overpayment decision. Claimant then waited some time before contacting her son to determine what to do next. After contacting her son, claimant decided to request a hearing. She again waited some time before contacting the Department for advice on how to request a hearing. On July 6, 2022, claimant filed a request for hearing on decision # 103104.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 103104 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 December 6, 2021, the Department mailed notice of decision # 103104 to claimant's residence in Dallas, Oregon. The deadline for claimant to file a timely request for hearing on decision #103104 was December 27, 2021. Claimant did not file her request for hearing until July 6, 2022. Claimant's request for hearing therefore was late.

Claimant did not receive the administrative decision because she was residing in Quartzsite, Arizona when the department mailed the decision. Although claimant did not update her address with the Department, she did not have reason to know the Department would need to contact her in December 2021. The last week that she filed for benefits was shortly after the week of August 21, 2021 through August 28, 2021, and it therefore was reasonable for her to conclude that she no longer had any business with the Department. Transcript at 22. Further, the record shows that she took reasonable steps to ensure that she received her Oregon mail while residing in Quartzsite. Claimant forwarded her Oregon mail to her address in Quartzsite and had a friend retrieve any mail that did not get forwarded. Since claimant took reasonable steps to receive her mail, the factor that prevented her from timely requesting a hearing, not knowing of the adverse administrative decision, was likely outside of her control.

However, claimant has not shown that she requested a hearing within a reasonable time after she learned of decision # 103104. Claimant filed her request for hearing on July 6, 2022. For this request to be within a reasonable time, claimant must have become aware of decision #103104 on or after June 29, 2022. At hearing, claimant testified that she did not know when she became aware of the decision. Nor does claimant know the length of time between when she received the overpayment administrative decision and when she requested a hearing of decision #103104. At one point claimant testified she filed

a request for hearing “definitely within seven days” after becoming aware of the administrative decision, whereas at another point she stated it was “probably 10 [days]” Transcript at 15, 24. While claimant was consistent that she did not learn decision # 103104 until late June, she has not carried her burden to show that this occurred on or after June 29, 2022. She therefore has not shown that she filed her request within a reasonable time, and her late request for hearing is dismissed.

DECISION: Order No. 22-UI-207438 is affirmed.

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

DATE of Service: January 13, 2023

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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