

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1199

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On February 4, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the week of January 16, 2022 through January 22, 2022 (week 03-22) and was therefore not eligible to receive unemployment insurance benefits for that week and until the reason for the denial had ended (decision # 131743). On February 24, 2022, decision # 131743 became final without claimant having filed a request for hearing. On March 16, 2022, claimant filed a late request for hearing on decision # 131743. ALJ Kangas considered claimant's request, and on June 15, 2022 issued Order No. 22-UI-196158, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by June 29, 2022. On July 1, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-196158 with the Employment Appeals Board (EAB). On November 30, 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 1, 2022 application for review of Order No. 22-UI-196158.¹

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, 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.

¹ Claimant filed their application for review by mail. Under OAR 471-041-0065(1)(b) (effective May 13, 2019), if mailed, the filing date of an application for review "is the date that the document is deposited in the United States mail in an envelope with first class postage, as evidenced by the postmark affixed to the envelope by the United States Postal Service." The record on review shows that claimant deposited their application for review in the U.S. mail in an envelope with first class postage that received a postmark dated July 1, 2022. Evidently, that mailing was not delivered, and claimant later placed it in a different envelope that was postmarked July 19, 2022. Nevertheless, claimant's submission postmarked July 1, 2022 met the elements of OAR 471-041-0065(1)(b) and so the application for review is treated as having been filed on July 1, 2022.

CONCLUSIONS AND REASONS: Order No. 22-UI-196158 is set aside and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 131743 should be allowed, and if so, the merits of that decision.

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 February 4, 2022, the Department mailed decision # 131743 to claimant at claimant's address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on that decision was February 24, 2022. Claimant did not file a request for hearing until March 16, 2022. Accordingly, claimant's request for hearing was late.

In their appellant questionnaire response, claimant indicated that the reason they did not file their hearing request by the February 24, 2022 deadline was that they were homeless and living in the woods without access to transportation. EAB Exhibit 1 at 2. If claimant was unable to file a request for hearing because they were experiencing homelessness, claimant's late request for hearing may have been due to factors beyond claimant's reasonable control. However, further inquiry is needed to determine whether claimant had good cause to file the late request for hearing, and whether they filed the late request for hearing within a reasonable time. On remand, the ALJ should develop the record to confirm that claimant was unhoused during the period of time relevant to filing a timely appeal of decision # 131743, and if so, determine whether and when their difficulties relating to homelessness ceased such that they could file an appeal, and whether claimant's request for hearing was filed within a seven-day "reasonable time" thereafter.

Order No. 22-UI-196158 therefore is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing should be allowed, and if so, the merits of decision # 131743.

DECISION: Order No. 22-UI-196158 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: December 13, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-196158 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

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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