

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1250

*Reversed ~ Late Request for Hearing Allowed
Merits Hearing Required*

*Revocada ~ Se Permite La Aplicación Tardía Para Una Audiencia
Se Requiere una Audiencia Sobre Decisión # 101623*

PROCEDURAL HISTORY: On July 16, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective August 23, 2020 (decision # 101623). On August 5, 2021, decision # 101623 became final without claimant having filed a request for hearing. On September 12, 2022, claimant filed a late request for hearing on decision # 101623. On November 30, 2022, ALJ Blam-Linville conducted a hearing that was interpreted in Spanish and at which the employer failed to appear. On December 6, 2022, ALJ Blam-Linville issued Order No. 22-UI-208953, dismissing claimant's request for hearing as late without good cause and leaving decision # 101623 undisturbed. On December 16, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

HISTORIA PROCESAL: *El 16 de julio de 2021, el Departamento de Empleo de Oregon (el Departamento) envió notificación de una decisión administrativa concluyendo que la reclamante dejó el trabajo sin una buena causa y fue descalificada de recibir beneficios de desempleo a partir del 23 de enero de 2020 (decisión # 101623). Decisión # 101623 se convirtió en final el 5 de agosto de 2021 sin que la reclamante hubiera presentado una aplicación para una audiencia. El 12 de septiembre de 2022, la reclamante presentó una aplicación tardía para una audiencia sobre decisión # 101623. El 30 de noviembre de 2022, la jueza administrativa Blam-Linville llevó a cabo una audiencia que fue interpretada en español. El empleador no participó en la audiencia. El 6 de diciembre de 2022, la jueza administrativa emitió la Orden de la Audiencia No. 22-UI-208953, rechazando la aplicación tardía de la reclamante porque fue tarde sin buena causa. El 16 de diciembre de 2022, la reclamante archivó una aplicación para revisión de la Orden de la Audiencia No. 22-UI-208953 con la Junta de Apelaciones de Empleo (EAB).*

WRITTEN ARGUMENT: Claimant submitted written arguments on December 19, 2022 and January 6, 2023. EAB did not consider claimant's December 19, 2022 written argument because she did not

declare that she provided a copy of her December 19, 2022 written argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also 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 as required by OAR 471-041-0090 (May 13, 2019). Claimant's January 6, 2023 written 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, EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's January 6, 2023 written argument to the extent it was based on the record.

ARGUMENTO POR ESCRITO: *La reclamante no declaró que envió una copia de su argumento por escrito del 19 de diciembre 2022 a todas las partes en este caso, de acuerdo con OAR 471-041-0080(2)(a) (13 de mayo de 2019). El argumento también contiene información que no es parte del expediente de este caso, y la parte no demostró que razones o circunstancias afuera de su control le impidió ofrecer esa información durante la audiencia, de acuerdo con OAR 471-041-0090 (13 de mayo de 2019). EAB solamente consideró información recibida en evidencia durante la audiencia. Vea ORS 657.275(2). El argumento por escrito de la reclamante del 6 de enero 2023 contiene información que no es parte del expediente de la audiencia en este caso, y la reclamante no demostró que razones o circunstancias afuera de su control le impidieron ofrecer esa información durante la audiencia. EAB consideró el argumento escrito de la reclamante del 6 de enero de 2023 en que se basó en el expediente de este caso.*

FINDINGS OF FACT: (1) On July 16, 2021, the Department mailed decision # 101623 to claimant's address on file with the Department. Decision # 101623 stated, "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 August 5, 2021." Exhibit 1 at 4.

(2) Claimant did not receive decision # 101623 in the mail. Claimant had sporadic problems receiving mail at her mailbox. For example, claimant failed to receive packages she ordered in 2019 and during the beginning of 2022. Claimant also once had a bank statement arrive in the mail to her with the seal broken.

(3) On October 8, 2021, claimant received a letter from the Department regarding her earnings information. On that date, claimant called the Department and spoke with a Department representative but was not told about decision # 101623.

(4) On September 6, 2022, claimant received information regarding decision # 101623 and disagreed with its conclusion that she had voluntarily quit working for her employer. Exhibit 1 at 70. On September 9, 2022, claimant drafted a letter requesting a hearing on decision # 101623. Exhibit 1 at 70.

(5) On September 12, 2022, claimant requested a hearing on decision # 101623 when she mailed her letter requesting a hearing on decision # 101623 to the Department.

CONCLUSIONS AND REASONS: Order No. 22-UI-208953 is reversed, claimant's late request for hearing is allowed, and a hearing on the merits of decision # 101623 is required.

CONCLUSIONES Y RAZONES: *Se revoca la Orden de la Audiencia No. 22-UI-208953, se permite la aplicación tardía de audiencia de la reclamante y se requiere una audiencia sobre los méritos de la decisión # 101623.*

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 July 16, 2021, the Department mailed decision # 101623 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 August 5, 2021. Claimant did not file a request for hearing on decision # 101623 until September 12, 2022. Accordingly, claimant’s request for hearing was late.

The order under review dismissed claimant’s late appeal for lack of good cause to extend the 20-day deadline, and for failure to file within a seven-day reasonable time. Order No. 22-UI-208953 at 4. The order concluded that claimant did not rebut the presumption that she received decision # 101623 in the mail and, in any event, was notified of decision # 101623 in an October 8, 2021 telephone conversation with the Department. Order No. 22-UI-208953 at 4. The record does not support these conclusions.

First, the record shows that claimant did not receive decision # 101623 when the Department mailed it on July 16, 2021. It is correct that documents “sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary.” OAR 137-003-0520(10) (effective January 31, 2012); *see also* ORS 40.135(q) (setting forth a similar presumption in civil and criminal court proceedings). However, at hearing, claimant rebutted the presumption by testifying that she did not receive decision # 101623 in the mail and had experienced problems receiving mail in the past. Transcript at 13-14. Thus, claimant overcame the presumption and claimant’s firsthand account of non-receipt controls, not the presumption.

Second, the record does not support that the Department notified claimant about decision # 101623 in an October 8, 2021 telephone conversation. At hearing, the ALJ asked the Department’s witness whether the Department had any contacts with claimant about decision # 101623 between the date it was issued (July 16, 2021) and the date claimant appealed it (September 12, 2022), and the witness answered “no, there are no contacts.” Transcript at 5-6. For her part, claimant testified that she received a letter from the Department on October 8, 2021, called the Department that day, and in that conversation “what they had told me was about the Decision.” Transcript at 16. However, it was unclear from claimant’s testimony whether her reference to the “Decision” was intended to refer to decision # 101623 or rather was meant as a reference to something else, such as general Department correspondence. Transcript at 16-17. Given the ambiguity of what claimant meant and the Department witness’s categorical statement that the Department had no contacts with claimant regarding decision # 101623, the preponderance of evidence supports that claimant was not told about decision # 101623 in the October 8, 2021 telephone conversation.

Thus, the record shows that claimant did not receive decision # 101623 in the mail, which was a factor beyond her reasonable control that prevented her from filing a timely appeal. That factor did not cease when claimant called the Department on October 8, 2021, because claimant did not learn of decision # 101623 during that conversation. Moreover, even if claimant had learned of the existence of decision # 101623 at that time, there is no indication from the record that she was informed that she had a right to appeal the decision or that the deadline for doing so had passed. Therefore, the factor preventing a timely filing would have persisted even if claimant had learned of the existence of decision # 101623 on October 8, 2021.

Claimant learned about decision # 101623 on September 6, 2022. Specifically, claimant wrote, translated from Spanish, “I write this letter to request two hearings. The first hearing for which there was a decision where they determined that I voluntarily resigned the job with NW Staffing Resources on August 28, 2020 based on information that was given to them incorrectly. The number of the decision is 101623 *information that I got September 6, 2022. Decision with which I disagree.*” Exhibit 1 at 70 (Translated from Spanish with emphasis added). Thus, claimant learned of the existence of decision # 101623 on September 6, 2022 although it remains unknown whether claimant had ever received a copy of the administrative decision or was specifically made aware that she had a right to appeal it.

Nevertheless, on September 12, 2022, claimant made a request for hearing on decision # 101623, which was within a seven-day reasonable time of the September 6, 2022 date when she learned of decision # 101623. Therefore, regardless of whether the factor beyond her control remained when she appealed on September 12, 2022, claimant filed her request for hearing within a seven-day reasonable time of when she learned of the existence of the decision. As such, claimant established good cause to extend the deadline to file a request for hearing on decision # 101623 a reasonable time to September 12, 2022. Claimant’s late request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of decision # 101623.

DECISION: Order No. 22-UI-208953 is set aside, and this matter remanded for further proceedings consistent with this order.

DECISIÓN: *La Orden de la Audiencia No. 22-UI-208953 se pone a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*

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

DATE of Service: February 3, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-208953 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

NOTA: *La falta de cualquier parte de presentarse a la audiencia sobre la remisión no reinstalará la Orden de la Audiencia No. 22-UI-208953, ni devolverá esta orden a la EAB. Solamente una aplicación oportuna para revisión de la orden subsiguiente de la nueva audiencia volverá este caso a la 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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