

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1256

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On December 10, 2020, 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 benefits effective May 31, 2020 (decision # 121559). On December 30, 2020, decision # 121559 became final without claimant having filed a request for hearing. On February 12, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on March 8, 2021 issued Order No. 21-UI-162285, dismissing the request as late subject to claimant's right to renew the request by responding to an appellant questionnaire by March 22, 2021. On March 12, 2021, claimant filed a timely response to the appellant questionnaire. On May 18, 2021, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 21-UI-162285 was vacated and that a new hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of decision # 121559. On December 13, 2022, ALJ Fraser conducted the hearing, and on December 15, 2022 issued Order No. 22-UI-210046, dismissing claimant's request for hearing as late without good cause, leaving decision # 121559 undisturbed. On December 19, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) On December 10, 2020, the Department mailed decision # 121559 to claimant at his address of record. Decision # 121559 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received not later than December 30, 2020." Exhibit 1 at 2. However, claimant did not receive the decision in the mail.

(2) On December 30, 2020, claimant called the Department inquiring about the status of his claim, but he was not made aware that decision # 121559 had been issued, or that the deadline to request a hearing was that day.

(3) On January 4, 2021, claimant again called to check the status of his claim but was not given specific information on decision # 121559 or his appeal rights.

(4) On January 6, 2021, claimant called the Department inquiring why his benefits were denied. The Department's representative advised claimant of decision # 121559 and "[w]ent over in detail how to appeal." Transcript at 5. Claimant then spoke with the Department representative who had adjudicated decision # 121559, and the adjudicator also advised claimant on the phone and by email how to appeal if he did not agree with the administrative decision. Claimant made a similar call to the Department the following day.

(5) On February 12, 2021, claimant filed a request for hearing on decision # 121559.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 121559 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.

The record shows that claimant did not receive decision # 121559 in the mail and did not learn of its existence and his right to appeal it until January 6, 2021. Claimant testified that he never received decision # 121559 in the mail. Transcript at 23. This was consistent with the testimony of the Department's witness who stated, based on the Department's call notes that claimant called to inquire about his claim on December 30, 2020, 20 days after the decision was mailed, because he did not know why the claim had not been paid. Transcript at 5. The witness further testified that the call notes stated that claimant was not told about decision # 121559 or his right to appeal it until January 6, 2021, after the period to timely request a hearing had expired. Transcript at 5-6. Claimant's failure to receive decision # 121559 in the mail, and the Department's failure to inform him of the decision until January 6, 2021, were factors beyond claimant's reasonable control that prevented him from filing a timely request for hearing. Accordingly, good cause existed to extend the filing deadline for a reasonable time.

However, claimant has not shown that he requested a hearing within a reasonable time after he learned of decision # 121559 and his appeal rights. Claimant denied that he was told of decision # 121559 or his appeal rights during the calls of January 6, 2021, and January 7, 2021. Transcript at 14-15. Instead, he testified that during one call he was told that he would not get benefits so he should "just stop calling" and "find a job." Transcript at 21. He then decided to "give up" on the claim until filing his request for hearing on February 12, 2021. Transcript at 21-22. In contrast, the Department witness testified that the call notes from January 6, 2021 showed that claimant spoke with two employees, both of whom informed claimant of decision # 121559. Transcript at 9-10. The notes further detailed that the Department's employees told claimant how to appeal the decision, and that instructions on how to request a hearing were emailed to claimant that day at his request, and listed the email address claimant provided during the call for that purpose. Transcript at 10. The Department representative disputed that claimant was told to "stop calling," as it was "not [the Department's] practice to do that." Transcript at

24. The Department's call notes, made contemporaneously and in the ordinary course of business by two separate Department employees whose accounts are consistent, are likely the most accurate record of what transpired during claimant's calls. More likely than not, claimant was told of decision # 121559 and his appeal rights during the call of January 6, 2021, and was sent this information by email that day. The factors that prevented claimant from requesting a hearing therefore ceased upon claimant being given this information. Claimant did not file his request for hearing within seven days of January 6, 2021, and therefore has not proven that he filed his late request for hearing within a reasonable time.

Claimant's late request for hearing on decision # 121559 therefore is dismissed under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 22-UI-210046 is affirmed.

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

DATE of Service: January 27, 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.

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