

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0005

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On March 28, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct and that claimant was therefore disqualified from receiving unemployment insurance benefits effective February 13, 2022 (decision # 104407). On April 18, 2022, decision # 104407 became final without claimant having filed a request for hearing. On April 20, 2022, claimant filed a late request for hearing on decision # 104407. ALJ Kangas considered claimant's request, and on August 2, 2022 issued Order No. 22-UI-199574, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 16, 2022. On August 19, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-199574 with the Employment Appeals Board (EAB). On December 20, 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 August 19, 2022 application for review of Order No. 22-UI-199574.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence includes claimant's questionnaire response, which has been marked as EAB Exhibit 1. Copies of EAB Exhibit 1 have been 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 March 28, 2022, the Department mailed claimant decision # 104407. The decision 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 April 18, 2022." Exhibit 1 at 2.

(2) Claimant did not receive decision # 104407 in the mail.

(3) Sometime after March 28, 2022, claimant's neighbor died. On April 20, 2022, the neighbor's son gave claimant a small stack of mail that he found at the deceased neighbor's home. Decision # 104407 was in the stack of mail. That same day, claimant requested a hearing regarding decision # 104407. *See* EAB Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 104407 is allowed. Claimant is entitled to a hearing on the merits of decision # 104407.

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. A letter duly directed and mailed is presumed to be received in the regular course of the mail. ORS 40.135(1)(q).

Claimant's request for hearing on decision # 104407 was due by April 18, 2022. Because claimant did not file their request for hearing until April 20, 2022, the request was late. However, claimant's late request for hearing is allowed because the record shows that claimant requested the hearing within a reasonable time upon a showing of good cause to extend the hearing deadline.

Claimant's response to the appellant questionnaire shows that claimant did not receive decision # 104407 in the mail. Although the record shows that decision # 104407 was mailed to claimant on March 28, 2022, claimant's detailed assertion about receiving the decision from his deceased neighbor's son on April 20, 2022 after the son found the decision and other mail at the neighbor's home establishes that claimant did not receive decision # 104407 in their own mail. Therefore, the weight of the evidence overcomes the legal presumption that claimant received decision # 104407 in the normal course of the mail. Claimant's failure to receive decision # 104407 was therefore a factor beyond their reasonable control that prevented them from filing a timely request for hearing. Claimant therefore established good cause for failing to file their request for hearing by March 28, 2022.

The circumstances that prevented a timely filing in this case ceased to exist when claimant received decision # 104407 from their neighbor's son. Claimant filed a late request for hearing the same day. Claimant therefore filed their late request for hearing on decision # 104407 on the same day the circumstances that prevented a timely filing ended, which was within the seven-day "reasonable time" period. Because claimant filed their late request for hearing within a reasonable time, their late request for hearing is allowed, and claimant is entitled to a hearing on the merits of decision # 104407.

DECISION: Order No. 22-UI-199574 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: January 4, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-199574 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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