

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0044-R

Request for Reconsideration Allowed
EAB Decision 2023-EAB-0044 Adhered to on Reconsideration
Order No. 22-UI-209643 Affirmed
Request to Reopen Allowed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On December 8, 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 benefits effective August 2, 2020 (decision # 94751). On December 28, 2021, decision # 94751 became final without claimant having filed a request for hearing. On February 1, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on May 2, 2022 issued Order No. 22-UI-192665, dismissing the request as late subject to claimant's right to renew the request by filing a response to an appellant questionnaire by May 16, 2022. On May 12, 2022, claimant filed a timely response to the appellant questionnaire. On June 9, 2022, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 22-UI-192665 was vacated and that a hearing would be scheduled to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 94751. On June 9, 2022, OAH served notice a hearing scheduled for June 22, 2022. On June 22, 2022, claimant failed to appear for the hearing, and ALJ Buckley issued Order No. 22-UI-196586, dismissing claimant's late request for hearing on decision # 94751 due to claimant's failure to appear. On June 29, 2022, claimant filed a timely request to reopen the June 22, 2022 hearing. On December 5, 2022, ALJ Nyberg conducted a hearing, and on December 13, 2022 issued Order No. 22-UI-209643, allowing claimant's request to reopen the June 22, 2022 hearing, but dismissing claimant's request for hearing on decision # 94751 as late without good cause.

On January 3, 2023, claimant filed an application for review of Order No. 22-UI-209643 with the Employment Appeals Board (EAB). On February 8, 2023, EAB issued EAB Decision # 2023-EAB-0044, affirming and adopting Order No. 22-UI-209643. On February 27, 2023, claimant filed a timely request for reconsideration of EAB Decision 2023-EAB-0044. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

Claimant asserted in her request for reconsideration that the hearing proceedings were unfair or the ALJ was biased. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

FINDINGS OF FACT: (1) On December 8, 2021, the Department mailed decision # 94751 to claimant's address of record on file with the Department. Decision # 94751 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 December 28, 2021." Exhibit 1 at 2.

(2) Claimant was out of town tending to a family emergency beginning in early December 2021 when decision # 94751 was mailed. On January 7, 2022, claimant returned home and discovered decision # 94751. She contacted the Department on January 12 and 14, 2022 to inquire about the decision.

(3) On January 18, 2022, claimant contacted the Department again and was advised during a communication with a Department representative to file a request for hearing on decision # 94751 if she disagreed with it. Audio Record at 28:10 to 29:18.

(4) On February 1, 2022, claimant filed a late request for hearing on decision # 94751. She did not file her request for hearing between January 18, 2022, and February 1, 2022, because "that's just how long it took [her] to get [her] paperwork in." Audio Record at 29:20 to 29:45.

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is allowed. EAB Decision 2022-EAB-0044 is adhered to on reconsideration. Claimant's request for hearing was late without good cause and is dismissed.

Request for Reconsideration. ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." "Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice." OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

Claimant filed a timely request for reconsideration within 20 days of the date EAB Decision 2023-EAB-0044 was mailed. Claimant declared that a copy of the request for reconsideration was provided to the employer. Claimant therefore filed a request for reconsideration consistent with the requirements set forth in OAR 471-041-0145, and the request for reconsideration is allowed.

Late Request for Hearing. 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 deadline to file a timely request for hearing on decision # 94751 was December 28, 2021. Claimant filed her request for hearing on February 1, 2022. Therefore, claimant's request for hearing was late. Claimant did not learn of decision # 94751 and her appeal rights from that decision until January 7, 2022, because she had to leave town on an urgent matter and could not check her mail. This was a circumstance beyond claimant's reasonable control and constituted good cause to extend the timely filing deadline a "reasonable time." This circumstance likely ceased to exist on January 7, 2022 when claimant received decision # 94751. However, as claimant then attempted to contact the Department with questions on how to proceed, it is possible the circumstance beyond claimant's reasonable control continued until January 18, 2022, when claimant was advised by the Department to file a late request for hearing if she disagreed with decision # 94751. Claimant could not identify any other circumstance that prevented filing of her request for hearing after January 18, 2022, except "the amount of paperwork that was sent to me or the thickness of it." Audio Record at 39:46 to 30:04. The record does not demonstrate that this was a circumstance that prevented claimant from filing her request for hearing beyond January 18, 2022, as claimant had already had eleven days to read decision # 94751 by that time. Therefore, the deadline for timely filing could be extended no further than January 25, 2022, a seven-day "reasonable time" after the factor beyond claimant's reasonable control ceased to exist on January 18, 2022. Claimant filed her request for hearing on February 1, 2022, and it therefore was not filed on or before the extended deadline for timely filing.

Claimant argued that she should not be held to the seven-day "reasonable time" limit if the deadline for timely filing is extended for good cause because the text of OAR 471-040-0010 detailing this limitation was not printed on decision # 94751. Claimant's Request for Reconsideration at 3. The appeal rights stated in decision # 94751 were sufficient to alert claimant that the deadline for timely requesting a hearing had passed by the time she learned of that decision, and therefore that she needed to act without undue delay in exercising her right to appeal. Claimant's late request for hearing was filed online, without attachments, and with only a brief explanation as to why she disagreed with decision # 94751. Exhibit 2 at 2. The record shows no reasonable explanation for why claimant's late request for hearing, which likely took only minutes to complete, could not have been filed within seven days of the Department advising her to file the request on January 18, 2023.

For these reasons, claimant's request for reconsideration does not show that EAB Decision 2023-EAB-0044 contained an error of material fact or law, or was inconsistent with any Department rule, officially stated Department position, or prior Department practice. Claimant's request for hearing was late without good cause because it was not filed within a seven-day "reasonable time" after the circumstance beyond claimant's reasonable control ceased. Her late request for hearing therefore is dismissed.

DECISION: Claimant's request for reconsideration is allowed. EAB Decision 2022-EAB-0044 is adhered to on reconsideration. Order No. 22-UI-209643 is affirmed.

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

DATE of Service: March 23, 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

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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.

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