

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0100

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On February 28, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide information in accordance with the Department's rules and therefore was ineligible for unemployment insurance benefits for the week of January 30, 2022 through February 5, 2022 (week 05-22) and until the reason for the denial had ended (decision # 112908). On March 21, 2022, decision # 112908 became final without claimant having filed a request for hearing. On April 27, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on August 4, 2022 issued Order No. 22-UI-199806, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 18, 2022. On August 18, 2022, claimant filed a timely response to the appellant questionnaire. On November 2, 2022, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 22-UI-199806 was vacated and that a new hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # 112908.

On January 6, 2023, ALJ Janzen conducted a hearing, and on January 10, 2023 issued Order No. 23-UI-212192, dismissing claimant's request for hearing on decision # 112908 as late without good cause and leaving decision # 112908 undisturbed. On January 13, 2023, claimant filed an application for review of Order No. 23-UI-212192 with the Employment Appeals Board (EAB). On January 13, 2023 and January 17, 2023, ALJ Janzen respectively issued Amended Order No. 23-UI-212676 and Amended Order No. 23-UI-212716, both of which corrected a typographical error contained in Order No. 23-UI-212192 but which are substantively the same as Order No. 23-UI-212192. Claimant's January 13, 2023 application for review is construed to apply to Amended Order No. 23-UI-212716.

FINDINGS OF FACT: (1) On February 28, 2022, the Department mailed decision # 112908 to claimant's address on file with the Department. Decision # 112908 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 March 21, 2022." Exhibit 1 at 2.

(2) At some point in March 2022 but before March 21, 2022, claimant received decision # 112908. Claimant read the administrative decision and “just felt like it denied [her].” Transcript at 18. Claimant did not see the language in decision # 112908 specifying that she had a right to appeal and that her deadline to do so was March 21, 2022.

(3) On April 27, 2022, claimant went to one of the Department’s WorkSource offices and filed a late request for hearing on decision # 112908 after a Department employee explained the process of appealing to her.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing is dismissed and decision # 112908 remains undisturbed.

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 28, 2022, the Department mailed decision # 112908 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 March 21, 2022. Claimant did not file a request for hearing until April 27, 2022. Accordingly, claimant’s request for hearing was late.

Claimant did not establish that a factor beyond her reasonable control prevented her from filing a timely appeal of decision # 112908. Claimant received the administrative decision through the mail in March 2022. It is reasonable to infer that the decision was received well before March 21, 2022 because the decision was issued on February 28, 2022.¹ Claimant read the decision and felt denied after doing so. Decision # 112908 gave notice of claimant’s right to appeal and that the deadline to do so in a timely manner was March 21, 2022. However, claimant did not see that language. Carefully reading the decision and recognizing her right to appeal and the deadline for doing so was within claimant’s reasonable control. Thus, the record shows that claimant received decision # 112908 in March 2022 with sufficient time and notice to file an appeal by the March 21, 2022 deadline but did not do so.

Claimant’s failure to see the notice of appeal rights and the deadline to file an appeal when reading decision # 112908 likely was the result of a mistake on claimant’s part. However, it was not an “excusable mistake” within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Therefore, claimant failed to show good cause to extend the deadline to file a request for hearing on decision # 112908, and claimant’s late request for hearing on decision # 112908 is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

¹ EAB takes notice of the generally cognizable fact that first class domestic mail sent through the U.S. Postal Service is estimated to take 1-5 business days after mailing to be delivered. *See* <https://www.usps.com/ship/first-class-mail.htm>.

DECISION: Amended Order No. 23-UI-212716 is affirmed.

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

DATE of Service: February 24, 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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