

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0164

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On June 15, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received \$4,995 in regular unemployment insurance benefits to which they were not entitled, and were required to repay the Department (decision # 102717). On July 5, 2022, decision # 102717 became final without claimant having filed a request for hearing. On July 12, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on October 19, 2022, issued Order No. 22-UI-205381, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 2, 2022. On October 26, 2022, claimant filed a response to the appellant questionnaire. ALJ Kangas considered claimant's response, and on January 17, 2023 issued Order No. 23-UI-212690, dismissing claimant's request for hearing as late without good cause and leaving decision # 102717 undisturbed. On January 31, 2023, claimant filed an application for review of Order No. 23-UI-212690 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Decision # 102717, mailed to claimant on June 15, 2022, stated, "If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before July 5, 2022 to be timely." Exhibit 1 at 2.

(2) Claimant had last claimed unemployment insurance benefits on April 22, 2021.¹

(3) Claimant did not regularly open their mail between June 10, 2022 and July 7, 2022 because they were busy assisting their daughter with moving out of state. Exhibit 3 at 6. Claimant was not expecting any correspondence from the Department during this time.

¹ EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

(4) On July 10, 2022, claimant opened the envelope containing decision # 102717 and first learned of its existence and their opportunity to appeal it.

(5) On July 12, 2022, claimant filed a late request for hearing on decision # 102717.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing is allowed on decision # 102717, and a hearing on the merits of decision # 102717 is required.

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 June 15, 2022, the Department mailed decision # 102717 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 July 5, 2022. Claimant did not file a request for hearing on decision # 102717 until July 12, 2022. Accordingly, claimant’s request was late.

The order under review dismissed claimant’s late request for hearing for lack of good cause to extend the 20-day deadline because it found claimant’s failure to timely open their mail was not a factor beyond claimant’s reasonable control or an excusable mistake. Order No. 23-UI-212690 at 2. The record does not support the conclusion that it was not an excusable mistake.

Claimant stated in their appellant questionnaire that they were preoccupied with other matters and did not regularly open their mail from June 10, 2022, until July 7, 2022. Exhibit 3 at 6. As claimant had not filed for unemployment benefits since April 22, 2021, it is reasonable to conclude that claimant was not expecting to receive an administrative decision from the Department assessing an overpayment more than a year after they stopped claiming benefits. Requiring a claimant to promptly check and open their mail for an indefinite time after their claim became inactive, on the mere chance an administrative decision retroactively denying them benefits might be issued, would be unreasonable under the circumstances. Because claimant had no reason to expect time-sensitive mail from the Department during this period, claimant’s delay in opening their mail for nearly a month, causing them to be unaware of decision # 102717 until after it became final, amounted to an excusable mistake.

The circumstances that prevented claimant from filing a timely filing request for hearing on decision # 102717 ceased to exist on July 10, 2022, the day claimant opened the decision and learned of their opportunity to appeal it. Claimant filed their late request for hearing on July 12, 2022, within seven days after the circumstances that prevented a timely filing ceased to exist, and therefore did so within a reasonable time. Accordingly, claimant established good cause to extend the deadline to file a request for hearing to July 12, 2022. Claimant’s late request for hearing is allowed, and claimant is entitled to a hearing on the merits of decision # 102717.

DECISION: Order No. 23-UI-212690 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 8, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-212690 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.