

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0193

Affirmed
Late Request for Hearing Dismissed

Confirmada
La Aplicación Tardía Para Una Audiencia Es Rechazada

PROCEDURAL HISTORY: On March 18, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective October 20, 2019 (decision # 115953). On April 7, 2021, decision # 115953 became final without claimant having filed a request for hearing. On May 17, 2022, claimant filed a late request for hearing on decision # 115953. ALJ Kangas considered claimant's request, and on August 17, 2022 issued Order No. 22-UI-200752, 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 31, 2022. On September 1, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-200752 with the Employment Appeals Board (EAB). On February 6, 2023, 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 September 1, 2022 application for review of Order No. 22-UI-200752.

HISTORIA PROCESAL: *El 18 de marzo de 2021, el Departamento de Empleo de Oregón (el Departamento) envió notificación de una decisión administrativa concluyendo que la reclamante dejó el trabajo sin una buena causa y fue descalificada de recibir beneficios de desempleo a partir del 20 de octubre de 2019 (decisión # 115953). Decisión # 115953 se convirtió en final el 7 de abril de 2021 sin que la reclamante hubiera presentado una aplicación para una audiencia. El 17 de mayo de 2022, la reclamante presentó una aplicación tardía para una audiencia. La Jueza Administrativa Kangas revisó la aplicación tardía de la reclamante y el 17 de agosto de 2022, emitió la Orden No. 22-UI-200752 rechazando la aplicación de la reclamante porque la aplicación era tarde. La orden también dió a la reclamante la oportunidad de responder a un cuestionario antes del 31 de agosto de 2022 sobre por qué la reclamante presentó su aplicación tarde. El 1 de septiembre de 2022, la reclamante presentó una*

respuesta tardía al cuestionario y una aplicación oportuna de revisión de la Orden No. 22-UI-200752 a La Junta de Apelaciones de Empleo (EAB). El 6 de febrero de 2023, la Jueza Administrativa Kangas envió por correo una carta indicando que la Oficina de Audiencias Administrativas (OAH) no consideraría la respuesta de la reclamante al cuestionario ni emitiría otra orden con respecto a la decisión # 115953 porque la respuesta al cuestionario era tarde. Este asunto se presenta ante la EAB basándose en la aplicación de revisión de la Orden No. 22-UI-200752 que la reclamante presentó el 1 de septiembre de 2022.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant’s Spanish-language September 1, 2022 response to the appellant questionnaire and an English translation of the responses, and has been marked as EAB Exhibit 1, and a copy 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.

ASUNTO DE PRUEBAS: *EAB ha considerado evidencia adicional para tomar esta decisión de acuerdo con OAR 471-041-0090(1) (13 de mayo de 2019). La evidencia adicional es la respuesta tardía al cuestionario de la reclamante y ha sido marcada como EAB Exhibit 1, y se le ha dado una copia a las partes con esta decisión. Cualquier parte que se oponga a la admisión de EAB Exhibit 1 tiene que someter su objeción a esta oficina por escrito, y tiene que incluir la base de su objeción, entre diez días de cuando esta decisión fue enviada. OAR 471-041- 0090(2). A menos que su objeción sea recibida y afirmada, el hecho reconocido permanecerá en el expediente.*

FINDING OF FACT: (1) On March 18, 2021, the Department mailed decision # 115953 to claimant’s address on file with the Department. Decision # 115953 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 7, 2021.” Exhibit 1 at 2.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing is dismissed. *La aplicación tardía para una audiencia de la reclamante es rechazada.*

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 request for hearing on decision # 115953 was due by April 7, 2021. Because claimant did not file their request for hearing until May 17, 2022, the request was late. On their appellant questionnaire response, claimant did not explain when, if at all, they received decision # 115953 or what circumstances led them to file the request for hearing late. EAB Exhibit 1 at 1–3. Further, the only

explanation gave as to why they believed they had good cause to file the late request for hearing was that they “do not have money because [they were] not working[.]” EAB Exhibit 1 at 3.

Claimant’s responses to the appellant questionnaire do not show that they failed to file a timely request for hearing due to factors beyond their reasonable control. Further, although their failure to file a timely request for hearing was likely the result of a mistake on claimant’s part, 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’s late request for hearing on decision # 115953 is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 22-UI-200752 is affirmed. *La Orden de la Audiencia 22-UI-200752 queda confirmada.*

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

DATE of Service: February 15, 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.

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.

NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Puede acceder a la encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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.