

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0204

Reversed & Remanded

PROCEDURAL HISTORY: On August 26, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work for the week of July 3, 2022 through July 9, 2022 (week 27-22) and was therefore not eligible to receive unemployment insurance benefits for that week (decision # 132109). On September 15, 2022, decision # 132109 became final without claimant having filed a request for hearing. On October 7, 2022, claimant filed a late request for hearing. ALJ Kangas considered the request, and on January 24, 2023, issued Order No. 23-UI-213443, dismissing the request as late subject to claimant's right to renew the request by responding to an appellant questionnaire by February 7, 2023. On February 10, 2023, claimant filed a late response to the appellant questionnaire and an application for review with the Employment Appeals Board (EAB). On February 13, 2023, ALJ Kangas mailed a letter to claimant stating that because the response to the appellant questionnaire was late, it would not be considered, a new order would not be issued, and Order No. 23-UI-213443 remained in effect. This matter comes before EAB based upon claimant's February 10, 2023 application for review.

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 response to the appellant questionnaire, including a portion that was written on the application for review, 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.

FINDINGS OF FACT: (1) On August 26, 2022, decision # 132109 was mailed to claimant's address of record on file with the Department. It 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 September 15, 2022." Exhibit 1 at 2. Claimant filed their late request for hearing on decision # 132109 on October 7, 2022.

(2) On February 10, 2023, claimant submitted a response to the appellant questionnaire and application for review. In this submission, they stated that they thought that a hearing scheduled on another matter

would address decision # 132109, and that they suffered “confusion” due to a traumatic brain injury. EAB Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Order No. 23-UI-213443 is set aside and this matter remanded for a hearing on whether claimant’s late request for hearing on decision # 132109 should be allowed and, if so, the merits of that decision.

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 # 132109 was September 15, 2022. Claimant filed their request for hearing on October 7, 2022. Therefore, the request for hearing was late. However, claimant may have had good cause to file their request for hearing late. Claimant suffered from a traumatic brain injury that caused them confusion. Further, claimant might have believed that a pending hearing request on a different administrative decision would also address decision # 132109. These facts may have amounted to circumstances beyond claimant’s reasonable control or an excusable mistake that prevented a timely filing.

The portion of the appellant questionnaire response claimant submitted did not detail when, or if, claimant received decision # 132109. EAB Exhibit 1 at 2. In claimant’s request for hearing, they stated that they requested a hearing in May 2022, and had “called about this several times with no resolve.” Exhibit 2 at 2. As decision # 132109 was not issued until August 26, 2022, and addressed benefits claimed for a week in July 2022, claimant could not have requested a hearing on decision # 132109 in May 2022 because it did not yet exist. However, in claimant’s subsequent calls to the Department in the intervening months, possibly including the timely filing period at issue, claimant may have formed the impression that they did not have to file a request for hearing on decision # 132109 because it would be addressed during the hearing they had already requested on a different administrative decision. Claimant indicated in their response that this misunderstanding is why their request for hearing on decision # 132109 had not been timely filed. EAB Exhibit 1 at 1. Claimant suffered from a traumatic brain injury and experienced confusion as a result of this condition. EAB Exhibit 1 at 1. Given claimant’s medical condition, this misunderstanding might have constituted a factor beyond claimant’s reasonable control or an excusable mistake, in which case good cause might exist to extend the deadline for timely filing. The record on direct review does not contain sufficient detail to determine how claimant came to believe that a request for hearing did not need to be timely filed on decision # 132109 for that decision to be addressed at a hearing. Further, the available information does not detail when claimant first discovered that this belief was erroneous, and therefore whether claimant’s October 7, 2022 late request for hearing was filed within a seven-day “reasonable time” after this discovery.

Because further development of the record is necessary for a determination of whether claimant had good cause to file a late request for hearing, Order No. 23-UI-213443 is reversed, and this matter remanded for a hearing on whether the late request for hearing on decision # 132109 should be allowed and, if so, the merits of that decision.

DECISION: Order No. 23-UI-213443 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 17, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-213444 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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