

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0286

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On January 9, 2020, 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 December 8, 2019 (decision # 151805). On January 29, 2020, decision # 151805 became final without claimant having filed a request for hearing. On September 13, 2022, claimant filed a late request for hearing on decision # 151805. ALJ Kangas considered claimant's request, and on January 3, 2023 issued Order No. 23-UI-211410, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 17, 2023. On January 17, 2023, claimant filed a timely response to the appellant questionnaire. On February 14, 2023, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 23-UI-211410 was vacated and that a 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 # 151805. On February 27, 2023, ALJ Taylor conducted a hearing, and on February 28, 2023 issued Order No. 23-UI-217448, concluding that claimant did not have good cause to file the late request for hearing and leaving decision # 151805 undisturbed. On March 6, 2023, claimant filed an application for review of Order No. 23-UI-217448 with the Employment Appeals Board (EAB).

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 January 17, 2023 response to the appellant questionnaire, 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 January 9, 2020, the Department mailed decision # 151805 to claimant's address on file with the Department. Decision # 151805 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 January 29, 2020." Exhibit 1 at 2.

(2) Claimant did not receive decision # 151805. At the time that the Department mailed it to her, claimant was experiencing debilitating mental and physical conditions, and was also in the process of packing up and selling her house.

(3) Claimant's medical conditions persisted from early 2020 through August 2022, and as a result, she was not able to contact the Department about her claim during that time. As of August 5, 2022, claimant "became healthy again and was . . . able to think clearly again." Audio Record at 20:34.

(4) On August 31, 2022, claimant called the Department and spoke to a representative who informed claimant that claimant's benefits had been denied due to the issuance of decision # 151805. During that call, the Department's representative advised claimant that she could file an appeal of decision # 151805 via the Department's website.

(5) On September 13, 2022, claimant filed a request for hearing on decision # 151805 via the Department's website.

CONCLUSIONS AND REASONS: Claimant's late request for hearing is dismissed.

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 # 151805 was due by January 29, 2020. Because claimant did not file her request for hearing until September 13, 2022, the request was late.

Claimant's delay in filing the request for hearing was due mostly to her failure to receive the administrative decision and, after its issuance, a long period of debilitating health conditions. Claimant's failure to receive the administrative decision most likely left her unaware of the specific outcome of the administrative decision and her right to appeal it. Claimant's health conditions left her unable to follow up with the Department until August 2022. These constituted factors beyond claimant's reasonable control. Claimant's health conditions resolved in early August 2022. However, claimant did not learn about decision # 151805 until August 31, 2022, when she contacted the Department. Therefore, the factors which prevented claimant from filing a timely request for hearing persisted until she learned about decision # 151805 that day.

Even if claimant had good cause to extend the deadline for the request for hearing, though, claimant has not shown that she filed the late request within a reasonable period of time after the factors which prevented a timely filing ceased. A “reasonable time” is defined as seven days after those factors ceased to exist. As discussed above, the factors which prevented a timely filing ceased to exist on August 31, 2022. In order for claimant to have filed the request within a “reasonable time” after those factors ceased to exist, she would have had to file the request by September 7, 2022. However, claimant did not file the request until nearly a week later, on September 13, 2022. Claimant offered no explanation for why she waited nearly two weeks after the Department advised her of her appeal rights to file the request for hearing as directed. As such, claimant has not shown that she filed her late request for hearing within a reasonable time as defined by OAR 471-040-0010.

Therefore, claimant’s late request for hearing on decision # 151805 must be dismissed under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 23-UI-217448 is affirmed.

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

DATE of Service: April 14, 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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 الاستئناف 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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