

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0290

Reversed & Remanded
Revocada y Remitida Para Otra Audiencia

PROCEDURAL HISTORY AND FINDINGS OF FACT: On February 23, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to complete ID.ME verification in accordance with the Department's rules and therefore was ineligible to receive unemployment insurance benefits for the week of January 16, 2022 through January 22, 2022 (decision # 60808). On March 15, 2022, decision # 60808 became final without claimant having filed a request for hearing. On June 21, 2022, claimant filed a late request for hearing on decision # 60808.

ALJ Kangas considered claimant's request, and on October 4, 2022 issued Order No. 22-UI-204226, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 18, 2022. On October 22, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-204226 with the Employment Appeals Board (EAB). On February 27, 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 October 22, 2022 application for review of Order No. 22-UI-204226.

HISTORIA PROCESAL Y HECHOS: *El 23 de febrero de 2022, el Departamento de Empleo de Oregon (el Departamento) envi6 notificaci6n de una decisi6n administrativa concluyendo que la reclamante no complet6 la verificaci6n de ID.ME de acuerdo con las reglas del Departamento y, por lo tanto, no era elegible para recibir beneficios del seguro de desempleo para la semana del 16 de enero de 2022 al 22 de enero de 2022 (decisi6n # 60808). La decisi6n # 60808 se convirti6 en final el 15 de marzo de 2022 sin que la reclamante hubiera presentado una aplicaci6n para una audiencia. El 21 de junio de 2022, la reclamante present6 una aplicaci6n tardía para una audiencia sobre la decisi6n # 60808.*

La Jueza Administrativa Kangas revisó la aplicación de la reclamante, y el 4 de octubre de 2022, emitió la Orden No. 22-UI-204226 rechazando la aplicación de la reclamante porque la aplicación era tarde. La orden también dio a la reclamante la oportunidad de renovar su aplicación respondiendo a un cuestionario antes del 18 de octubre de 2022 sobre por qué la reclamante presentó su aplicación tarde. El 22 de octubre de 2022, la reclamante presentó una respuesta tardía al cuestionario y una aplicación oportuna de revisión de la Orden No. 22-UI-204226 a La Junta de Apelaciones de Empleo (EAB). El 27 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 sobre la decisión # 60808 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-204226 que la reclamante presentó el 22 de octubre 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 is claimant’s request for hearing and response to the appellant questionnaire, 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 la regla OAR 471-041-0090(1) (13 de mayo de 2019). La evidencia adicional es la aplicación para una audiencia y la respuesta tardía al cuestionario de la reclamante y ha sido marcada como “EAB Exhibit 1” (Prueba Documental 1 de EAB), 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 EAB 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, la prueba documental permanecerá en el expediente.*

CONCLUSIONS AND REASONS: Order No. 22-UI-204226 is set aside and this matter remanded for a hearing on whether claimant’s late request for hearing on decision # 60808 should be allowed and, if so, the merits of that decision.

CONCLUSIONES Y RAZONES: *La Orden No. 22-UI-204226 se pone a un lado, y esta materia se remite para una audiencia para determinar si se permitirá la aplicación tardía para una audiencia sobre la decisión administrativa # 60808, y si se permite esa aplicación, entonces habrá una audiencia sobre los méritos de la decisión # 60808.*

ORS 657.269 provides that a Department’s decision 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 # 60808 was due by March 15, 2022. Because claimant did not file their request for hearing until June 21, 2022, the request was late. On their response to the appellant questionnaire, claimant indicated that they did not receive the administrative decision in February 2022. If claimant did not receive decision # 60808 prior to the timely appeal deadline, claimant may have filed the late request for hearing due to factors beyond their reasonable control. However, further information is necessary to determine if claimant had good cause to file the late request for hearing.

On remand, the ALJ should inquire as to when, if at all, claimant received or otherwise learned of decision # 60808, whether the decision was sent to claimant’s correct address, and what prompted claimant to file the request for hearing when they did. The ALJ should also ask questions to determine whether claimant filed their request for hearing within a reasonable time after the factors which prevented them from filing a timely request ceased to exist.

Order No. 22-UI-204226 therefore is reversed, and this matter remanded for a hearing on whether claimant’s late request for hearing should be allowed and, if so, the merits of decision # 60808.

DECISION: Order No. 22-UI-204226 is set aside, and this matter remanded for further proceedings consistent with this order. *La Orden de la Audiencia 22-UI-204226 se pone a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*

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

DATE of Service: March 21, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-204226 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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NOTA: *La falta de cualquier parte de presentarse a la audiencia sobre la remisión no reinstalará la Orden de la Audiencia No. 22-UI-204226, ni devolverá esta orden a la EAB. Solamente una aplicación oportuna para revisión de la orden subsiguiente de la nueva audiencia volverá este caso a la EAB.*

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

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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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