

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0325

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On February 11, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 144855). On March 3, 2022, decision # 144855 became final without the employer having filed a request for hearing. On May 1, 2022, the employer filed a late request for hearing. ALJ Kangas considered the employer's request, and on August 18, 2022 issued Order No. 22-UI-200794, dismissing the employer's request for hearing as late, subject to the employer's right to renew the request by responding to an appellant questionnaire by September 1, 2022. On August 23, 2022, the employer filed a timely response to the appellant questionnaire. On February 6, 2023, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 22-UI-200794 was cancelled, and that a hearing would be scheduled to determine whether the employer had good cause to file their late request for hearing, and if so, the merits of decision # 144855.

On February 21, 2023, ALJ Passmore conducted a hearing at which claimant failed to appear, and on March 1, 2023, ALJ Meerdink issued Order No. 23-UI-217640 based on the record at hearing, re-dismissing the employer's request for hearing as late without good cause and leaving decision # 144855 undisturbed. On March 20, 2023, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider the employer's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). However, because the employer asserted that the hearing proceedings were unfair or the ALJ was biased, the argument was considered to the extent necessary to review those assertions.

The employer asserted that they were not "given the opportunity to object" to Exhibit 2, the Department's attestation. Employer's Written Argument at 1. The record shows that the employer received a copy of Exhibit 2, that the ALJ read the document into the record in its entirety, and that the employer was asked if they had an objection to Exhibit 2, to which they replied, "No." Audio Record at

13:20 to 14:00; 19:35 to 24:52. Further, the employer's stated objections in the written argument did not involve the admissibility of Exhibit 2, but were simply noting the employer's disagreement with two of the Department's factual assertions in the document. Employer's Written Argument at 1. First, the employer asserted that "UI Pub form 106 titled Appeal Rights and Procedures" was not included with their copy of decision # 144855, in contrast with the Department's attestation that it was. Employer's Written Argument at 1; Exhibit 2 at 1-2. Second, the employer asserted that they submitted a Request for Relief from Charges on February 22, 2022 electronically via SIDES, while the attestation stated this request was submitted via fax. Employer's Written Argument at 1; Exhibit 2 at 2. Inasmuch as these factual disagreements did not constitute legal challenges to Exhibit 2's admissibility, the ALJ did not err in admitting Exhibit 2. Further, the record shows that the employer had sufficient opportunity to present evidence regarding these disputed issues of fact, which were of limited relevance to establishing whether the employer had good cause to file their late request for hearing.

The employer next assigned error to the ALJ's failure to consider documents that the employer had attached to their response to the appellant questionnaire. Employer's Written Argument at 1. However, the employer did not re-submit these documents prior to the hearing as proposed hearing exhibits, with copies to the opposing party, as instructed by the Notice of Hearing. Accordingly, the ALJ correctly declined to admit them as exhibits at hearing and explained that since they were part of the record, but not exhibits, the employer could offer additional testimony as to the information contained in those documents. Audio Record at 14:50 to 15:25. The record was sufficiently developed as to the relevant portions of the contents of these documents.

The remainder of the employer's argument involved the Department making a typographical error in a separate administrative decision issued March 24, 2022 regarding the employer's request for relief from charges arising from the claim at issue. Employer's Written Argument at 1. That administrative decision mistakenly referred to decision # 144855 as having been issued on *December* 11, 2022 (a date that was obviously in error since it had not yet occurred), rather than on *February* 11, 2022. Employer's Appellant Questionnaire Response at 4-7. As the March 24, 2022 administrative decision was issued after the March 3, 2022 deadline for timely requesting a hearing on decision # 144855, this typographical error could not have been in any way responsible for the employer's failure to file a request for hearing on decision # 144855 by the March 3, 2022 deadline, and the employer's reliance on it as evidence in this matter is misplaced.

The employer argued that their request for hearing was late because they failed to understand their appeal rights due to the way decision # 144855 was worded, and since the Department made a typographical error in the unrelated March 24, 2022 administrative decision, that any error the employer had made in failing to understand or seek clarification of their appeal rights on decision # 144855 should therefore have been considered "excusable." Employer's Written Argument at 2. OAR 471-040-0010(1)(b)(B) specifically excludes "[n]ot understanding the implications of a decision or notice when it is received" from what may constitute an "excusable mistake." That a separate and unrelated typographical error was made by the Department, weeks after the employer's failure to file a timely request for hearing on decision # 144855, would somehow retroactively transform the employer's failure to understand the implications of decision #144855 into an "excusable mistake" does not logically follow. Accordingly, the employer's arguments that the hearing was unfair are without merit.

Additionally, the employer's argument intimated that because the hearing was briefly interrupted due to technological difficulties with the phone lines near the conclusion of the hearing, and because Order No. 23-UI-217640 was authored by a different ALJ than the one that conducted the hearing due to ALJ Passmore's subsequent unavailability, the employer was subjected to bias or unfairness. Employer's Written Argument at 2. This is similarly unsupported by the record. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

DECISION: Order No. 23-UI-217640 is affirmed.

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

DATE of Service: April 25, 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 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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