

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0452

Reversed & Remanded

PROCEDURAL HISTORY: On June 15, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and was disqualified from receiving benefits effective May 22, 2022 (decision # 141423). On July 5, 2022, decision # 141423 became final without claimant having filed a request for hearing. On August 22, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on November 28, 2022 issued Order No. 22-UI-208315, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by December 12, 2022. On December 19, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review with the Employment Appeals Board (EAB). On April 13, 2023, ALJ Kangas mailed a letter to the parties stating that because claimant's response to the appellant questionnaire was late, it would not be considered, another order would not be issued, and Order No. 22-UI-208315 remained undisturbed. This matter comes before EAB based upon claimant's December 19, 2022 application for review of Order No. 22-UI-208315.

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 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 June 15, 2022, the Department mailed decision # 141423 to claimant at claimant's address of record on file with the Department. Decision # 141423 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 July 5, 2022." Exhibit 1 at 2. Claimant filed their request for hearing on August 22, 2022.

(2) The Office of Administrative Hearings (OAH) mailed Order No. 22-UI-208315 to claimant on November 28, 2022. On December 19, 2022, claimant filed a response to the appellant questionnaire. In

it, claimant alleged that they did not receive “the administrative decision” until December 8, 2022. EAB Exhibit 1 at 1. Other answers in the questionnaire response suggested that claimant had believed they did not receive unemployment benefits due to an identity verification issue, and later became aware that it was due to the work separation disqualification in decision # 141423. Exhibit 1 at 2.

CONCLUSIONS AND REASONS: Order No. 22-UI-208315 is set aside 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 # 141423.

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 # 141423 was July 5, 2022. Claimant filed their request for hearing on August 22, 2022. Therefore, the request for hearing was late. However, claimant may have had good cause to file the request for hearing late because the record shows that claimant might not have received a copy of decision # 141423 prior to the decision becoming final.

The information claimant provided in their appellant questionnaire response indicated that they did not receive “the administrative decision” until December 8, 2022, over three months after they filed their request for hearing on decision # 141423. Because Order No. 22-UI-208315 was mailed to claimant on November 28, 2022, claimant likely meant they received Order No. 22-UI-208315 on December 8, 2022, and not decision # 141423. Other answers in claimant’s questionnaire response suggested that claimant was unaware of the existence of decision # 141423 during the appeal period, despite the Department failing to pay claimed benefits, because claimant believed their denial of benefits stemmed from an identity verification issue, rather than the work separation at issue in decision # 141423. If claimant did not receive decision # 141423 and was unaware of its existence prior to the decision becoming final, this may have constituted a factor outside claimant’s reasonable control that prevented them from timely filing their request for hearing. However, further inquiry is needed 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 about decision # 141423 and their right to appeal it, and any other factors that may have prevented claimant from filing a timely request for hearing. The ALJ also should inquire as to when those factors, if any, ceased to exist, and whether claimant filed their request within a reasonable time after any such factors ceased to exist.

Order No. 22-UI-208315 therefore is set aside, 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 # 141423.

DECISION: Order No. 22-UI-208315 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: April 26, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-208315 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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