

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0567

Reversed & Remanded

PROCEDURAL HISTORY: On March 13, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$2,060 overpayment of regular unemployment insurance (regular UI) benefits that claimant was required to repay to the Department, a \$309 monetary penalty, and a 14-week penalty disqualification from future benefits (decision # 194865). On April 2, 2019, decision # 194865 became final without claimant having filed a request for hearing. On April 27, 2020, claimant filed a late request for hearing on decision # 194865. ALJ Kangas considered claimant's request, and on January 10, 2023 issued Order No. 23-UI-212211, 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 24, 2023. On January 20, 2023, claimant filed a timely response to the appellant questionnaire. ALJ Kangas considered claimant's appellant questionnaire response, and on May 11, 2023 issued Order No. 23-UI-224676, cancelling Order No. 23-UI-212211 and re-dismissing claimant's request for hearing as late. On May 16, 2023, claimant filed an application for review of Order No. 23-UI-224676 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching this decision because claimant 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).

FINDINGS OF FACT: (1) On March 13, 2019, the Department mailed decision # 194865 to claimant's address of record on file with the Department. Decision # 194865 stated, "If you disagree with the enclosed Administrative Decision, please use the form below to request a hearing." Exhibit 1 at 4. Decision # 194865 also stated, "To be timely, any appeal from this decision must be filed on or before APRIL 2, 2019." Exhibit 1 at 1.

(2) On April 27, 2020, claimant filed a late request for hearing on decision # 194865 by phone.

(3) On January 20, 2023, claimant filed a response to the appellant questionnaire. In it, claimant wrote that they received decision # 194865 on March 13, 2019. Exhibit 3 at 3. However, claimant also wrote that their appeal was not filed by the deadline because, "I did not receive a hearing request in the mail."

Exhibit 3 at 2. When asked if claimant believed they filed a request for hearing prior to the filing deadline, they wrote, “I requested an appeal on the phone.” Exhibit 3 at 3. Claimant elaborated, “My cell phone had only two minutes on my phone. I called the hearings phone number.” Exhibit 3 at 2.

CONCLUSIONS AND REASONS: Order No. 23-UI-224676 is set aside and this matter remanded for a hearing on whether claimant’s late request for hearing on decision # 194865 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 # 194865 was April 2, 2019. Claimant filed their request for hearing on April 27, 2020. Therefore, the request for hearing was late. However, claimant may have had good cause to file their request for hearing late because the record shows that claimant might not have received a copy of decision # 194865 prior to the decision becoming final, or may have mistakenly believed they timely requested a hearing by phone.

If claimant did not timely receive the decision in the mail, this may have constituted a factor beyond claimant’s reasonable control that prevented them from filing a request for hearing by the April 2, 2019 deadline. Though claimant stated that they did not receive a “hearing request” in the mail, it is unclear whether claimant was referring to decision # 194865 and the attached form with which they could have requested a hearing, or to some other document. Claimant’s response that they received decision # 194865 on the same date that it was mailed suggests that claimant did not understand that question. The record therefore must be further developed as to when or if claimant received decision # 194865, or learned about its existence and their appeal rights therefrom.

Similarly, claimant’s statements about difficulties communicating with the Department by phone suggest the possibility that claimant attempted to request a hearing by phone prior to the April 2, 2019 filing deadline, was disconnected from the call prematurely due to problems with their phone, and mistakenly thought that a hearing request had been filed based on that call. If such a scenario occurred, it may have constituted an excusable mistake that delayed claimant’s filing of the request for hearing beyond the deadline. Further development of the record is therefore necessary to understand claimant’s written statements surrounding their phone difficulties, and their relevance to the timeliness of claimant’s request for hearing.

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-224676 is reversed, and this matter remanded for a hearing on whether the late request for hearing on decision # 194865 should be allowed and, if so, the merits of that decision.

DECISION: Order No. 23-UI-224676 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 20, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-224676 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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