

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0848

Reversed & Remanded
Revocada y Remitida Para Otra Audiencia

PROCEDURAL HISTORY AND FINDINGS OF FACT: On February 24, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective January 30, 2022 (decision # 94436). On March 16, 2022, decision # 94436 became final without claimant having filed a request for hearing. On March 17, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on June 27, 2022 issued Order No. 22-UI-196899, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 11, 2022. On July 18, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-196899 with the Employment Appeals Board (EAB). On December 1, 2022, ALJ Kangas mailed a letter stating that the claimant's questionnaire response would not be considered or another order issued because the questionnaire response was late. This matter comes before EAB based upon claimant's timely application for review of Order No. 22-UI-196899.

HISTORIA PROCESAL Y HECHOS: *El 24 de febrero de 2022, el Departamento de Empleo de Oregon (el Departamento) envi6 notificaci6n de una decisi6n administrativa concluyendo que el reclamante dej6 el trabajo sin una buena causa y fue descalificado de recibir beneficios de desempleo a partir del 30 de enero de 2022 (decisi6n # 94436). La decisi6n # 94436 se convirti6 en final el 16 de marzo de 2022 sin que el reclamante hubiera presentado una aplicaci6n oportuna para una audiencia. El 17 de marzo de 2022, el reclamante present6 una aplicaci6n tardía para una audiencia sobre la decisi6n # 94436.*

La Jueza Administrativa (ALJ) Kangas revis6 la aplicaci6n del reclamante y el 27 de junio de 2022, emiti6 la Orden No. 22-UI-196899 rechazando la aplicaci6n del reclamante porque la aplicaci6n era tarde. La orden tambi6n dio al reclamante la oportunidad de responder a un cuestionario antes del 11 de julio de 2022 sobre por qu6 el reclamante present6 su aplicaci6n tarde. El 18 de julio de 2022, el reclamante present6 una respuesta tardía al cuestionario y una aplicaci6n oportuna de revisi6n de la Orden No. 22-UI-196899 a La Junta de Apelaciones de Empleo (EAB). El 1 de diciembre de 2022, la ALJ Kangas envi6 por correo una carta indicando que la Oficina de Audiencias Administrativas (OAH)

no consideraría la respuesta del reclamante al cuestionario ni emitiría otra orden sobre la decisión # 94436 porque la respuesta al cuestionario era tarde. Este asunto se presenta ante la EAB basándose en la aplicación de revisión oportuna de la Orden No. 22-UI-196899.

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, marked as EAB Exhibit 1 and English translation, 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 respuesta tardía al cuestionario del reclamante y traducción 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-196899 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 # 94436.

CONCLUSIONES Y RAZONES: *La Orden No. 22-UI-196899 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 # 94436, y si se permite esa aplicación, entonces habrá una audiencia sobre los méritos de la decisión # 94436.*

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 # 94436 was due by March 16, 2022. Because claimant did not file their request for hearing until March 17, 2022, the request was late. In their appellant questionnaire response, claimant stated in Spanish that they filed their request for hearing by fax on February 11, 2022. EAB Exhibit 1 at 1. Claimant further attached a scan of a receipt showing a date of “02/11/2022,” which claimant stated reflects the receipt claimant got for faxing the hearing request on February 11, 2022. EAB Exhibit 1 at 2-3.

Claimant’s assertion is confusing because February 11, 2022 was before the Department issued and mailed decision # 94436 on February 24, 2022. It seems impossible for claimant to have filed a request

for hearing on an administrative decision before it was issued. Furthermore, the record shows that the method by which the Department recognized claimant to have requested a hearing was by an undated letter that claimant uploaded via the Department's website on March 17, 2022, one day after the filing deadline. Exhibit 2 at 2-4.

Remand is warranted, however, given claimant's assertions that they filed a request for hearing by fax before the March 16, 2022 deadline, particularly in light of the possibility of a language barrier in this case. On remand, the ALJ should develop the record to determine whether claimant in fact made a timely request for hearing. This might be the case if, for example, claimant faxed the undated letter to the Department by March 16, 2022 but for unknown reasons it was not received or processed. If the record on remand shows that claimant did not timely request a hearing, the ALJ should ask questions to determine whether claimant had good cause to file late on March 17, 2022.

Order No. 22-UI-196899 therefore is set aside, and the matter remanded for a hearing on whether claimant filed a timely request for hearing, or whether claimant's late request for hearing should be allowed. If claimant's request for hearing is allowed, the ALJ must conduct a hearing on the merits of decision # 94436.

DECISION: Order No. 22-UI-196899 is set aside, and this matter remanded for further proceedings consistent with this order. *La Orden de la Audiencia 22-UI-196899 se pone a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*

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

DATE of Service: August 8, 2023

FECHA de Entrega del Documento: 8 de agosto de 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-196899 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.

NOTA: *La falta de cualquier parte de presentarse a la audiencia sobre la remisión no reinstalará la Orden de la Audiencia No. 22-UI-196899, 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

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.