

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0897

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On January 18, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not able to work, available for work, and actively seeking work from January 1 through 14, 2023 (weeks 01-23 and 02-23) and was not eligible for benefits for those weeks and until the reason for the denial ended (decision # 104744). On February 7, 2023, decision # 104744 became final without claimant having filed a request for hearing. On March 12, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on July 25, 2023 issued Order No. 23-UI-231387, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 8, 2023. On August 10, 2023, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 23-UI-231387 with the Employment Appeals Board (EAB). This matter comes before EAB based upon claimant's August 10, 2023 application for review.

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 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.

CONCLUSIONS AND REASONS: Order No. 23-UI-231387 is set aside and this matter remanded for a hearing on whether to allow claimant's late request for hearing on decision # 104744 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 request for hearing on decision # 104744 was February 7, 2023. Because claimant did not file a request for hearing on decision until March 12, 2023, the request for hearing was late.

Claimant’s response to the appellant questionnaire did not establish whether claimant received decision # 104744. However, claimant stated that they were prevented from timely filing a request for hearing, in part, because claimant “was not aware of deadline.” EAB Exhibit 1 at 2. This suggests claimant may not have received decision # 104744, as that decision stated the deadline for filing a request for hearing. Claimant further asserted in their questionnaire response that they “had a bad fall + injury” on January 28, 2023, and also “had a family emergency” prior to the filing deadline, though it is unclear if these statements refer to the same event. EAB Exhibit 1 at 3-4. Additionally, claimant stated that they called the Department on January 23, 2023 and left a voicemail. EAB Exhibit 1 at 4.

If claimant did not receive decision # 104744 and was not aware of the decision and their right to appeal it, this may have constituted a factor beyond claimant’s reasonable control that prevented timely filing. Similarly, if claimant was injured to the extent they could not file a request for hearing prior to the deadline, this also may have constituted a factor beyond claimant’s reasonable control that prevented timely filing. It is unclear from the record what claimant intended to accomplish through their call to the Department on January 23, 2023, but if claimant attempted to file a request for hearing at this time but was prevented from doing so, or reasonably thought they had successfully filed one as a result of the call, this may also have constituted a factor beyond claimant’s reasonable control that prevented timely filing. Therefore, further development of the record is needed to determine what prevented timely filing of the request for hearing.

On remand, inquiry should be made into whether and when claimant received # 104744, why they were unaware of the filing deadline, whether claimant’s injury or family emergency delayed their request for hearing, why claimant called the Department on January 23, 2023, whether claimant attempted to file a request for hearing prior to the one filed March 12, 2023, and whether any other factors prevented timely filing. Further, if good cause exists to extend the filing deadline, inquiry should be made as to whether claimant’s request for hearing was filed within a seven-day “reasonable time” of when the circumstances that prevented timely filing ceased.

Order No. 23-UI-231387 therefore is reversed, and this matter remanded for a hearing on whether to allow claimant’s late request for hearing and, if so, the merits of decision # 104744.

DECISION: Order No. 23-UI-231387 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: September 22, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-231387 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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