

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0909

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On September 9, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Mixed Earner Unemployment Compensation (MEUC) concluding that claimant was not entitled to MEUC benefits effective December 27, 2020. On September 29, 2021, the September 20, 2021 administrative decision became final without claimant having filed a request for hearing. On March 15, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on July 27, 2023, issued Order No. 23-UI-231744, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 10, 2023. On August 14, 2023, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 23-UI-231744 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the record. Claimant may offer new information, such as the documents claimant submitted with their written argument, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. Claimant must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct claimant to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

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.

FINDINGS OF FACT: (1) On September 3, 2021, claimant filed an application for MEUC benefits with the Department. When they did so, claimant attached a profit and loss statement to the application purporting to show that claimant had received over \$5,000 in net self-employment income in 2019.

(2) On September 9, 2021, the Department mailed the September 9, 2021 administrative decision to claimant's address of record on file with the Department. The September 9, 2021 administrative decision concluded that claimant was not entitled to MEUC benefits effective December 27, 2020. The September 9, 2021 administrative decision stated, in relevant part, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by September 29, 2021." Exhibit 1 at 2.

(3) Claimant did not receive the September 9, 2021 administrative decision.

(4) After applying for MEUC benefits, claimant periodically checked the Department's online claims system for updates on the status of their application, but did not receive any status information. EAB Exhibit 1 at 4. Claimant was aware that the Department was experiencing extended processing delays and so believed the unresolved status of their application was not unusual. EAB Exhibit 1 at 4.

(5) In late 2022, claimant began receiving regular unemployment insurance benefits from the Department for weeks of unemployment dating from 2021, which caused claimant to suspect that the Department may have processed their 2021 application for MEUC benefits. Exhibit 2 at 2. On March 15, 2023, claimant used the Department's hearing referral web form to inquire about the status of their MEUC application, which the Department considered to be claimant's late request for hearing on the September 9, 2021 administrative decision. Exhibit 2 at 2.

(6) On March 29, 2023, a Department representative responded to claimant's web form inquiry advising that the Department mailed claimant the September 9, 2021 administrative decision on September 9, 2021 and that it determined that claimant was not entitled to MEUC benefits because claimant did not have \$5,000 of net self-employment income in 2019. Exhibit 2 at 3. Claimant responded that they did have \$5,000 of net self-employment income in 2019, advised that they submitted a profit and loss statement with their September 3, 2021 application for MEUC benefits that showed \$5,000 of net self-employment income, and then attached the profit and loss statement to the web form exchange with the Department representative. Exhibit 2 at 3.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on the September 9, 2021 administrative decision is allowed, and a hearing on the merits of the decision is required.

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 request a hearing on the September 9, 2021 administrative decision was September 29, 2021. Because claimant did not request a hearing until March 15, 2023, claimant's request for hearing was late.

Claimant established good cause to extend the deadline to file a request for hearing on the September 9, 2021 administrative decision. Claimant did not receive the decision, which was a circumstance beyond their reasonable control that prevented a timely filing. Claimant acted reasonably in checking the Department's online claims system for status updates, and it was not unreasonable for them to believe that the status of the application remained unresolved given that the Department experienced extended processing delays. On March 15, 2023, while the factor beyond their control preventing a timely filing remained ongoing, claimant made a web form inquiry into the MEUC application's status, which the Department regarded as a request for hearing. Subsequently, on March 29, 2023, a Department representative responded to the inquiry and made claimant aware of the existence of the September 9, 2021 administrative decision. Thus, a factor beyond claimant's control, their non-receipt of the administrative decision, prevented claimant from timely filing an appeal. Claimant then requested a hearing on March 15, 2023, while still experiencing this factor.

Accordingly, claimant established good cause to file their request for hearing late and did so within a reasonable time. Claimant's late request for hearing is allowed and a hearing on the merits of the September 9, 2021 administrative decision is required.

DECISION: Order No. 23-UI-231744 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 25, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-231744 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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