

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0916-R

Request for Reconsideration Allowed
EAB Decision 2023-EAB-0916 Adhered to on Reconsideration
Late Request for Hearing Dismissed

La Aplicación Para Reconsideración Es Permitida
Decisión EAB 2023-EAB-0916 Confirmada en Reconsideración
La Aplicación Tardía Para Una Audiencia Es Rechazada

PROCEDURAL HISTORY AND FINDINGS OF FACT: On January 18, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from December 11, 2022, through December 24, 2022 (weeks 50-22 through 51-22) and therefore was not eligible to receive benefits for those weeks and until the reason for the denial had ended (decision # 152033). On February 7, 2023, decision # 152033 became final without claimant having filed a request for hearing. On April 8, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on July 12, 2023, issued Order No. 23-UI-230238, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 26, 2023.

On July 19, 2023, claimant filed a timely response to the appellant questionnaire. On July 26, 2023, the Office of Administrative Hearings (OAH) mailed claimant a letter stating that based on claimant's response, Order No. 23-UI-230238 was cancelled and vacated, and that a hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if allowed, to determine the merits of decision # 152033. On July 26, 2023, OAH served notice of a hearing scheduled for August 10, 2023. On August 10, 2023, ALJ Lucas conducted a hearing which was interpreted in Spanish, and on August 11, 2023, issued Order No. 23-UI-232980, dismissing claimant's request for hearing as late without good cause and leaving decision # 152033 undisturbed. On August 15, 2023, claimant filed an application for review of Order No. 23-UI-232980 with the Employment Appeals Board (EAB).

On September 8, 2023, EAB issued EAB Decision 2023-EAB-0916, affirming Order No. 23-UI-232980. On September 15, 2023, claimant filed a timely request for reconsideration of EAB Decision 2023-EAB-0916 with EAB. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

HISTORIA PROCESAL Y HECHOS: *El 18 de enero de 2023, el Departamento de Empleo de Oregón (el Departamento) envió notificación de una decisión administrativa concluyendo que el reclamante no estaba disponible para trabajar del 11 de diciembre de 2022 hasta el 24 de diciembre de 2022 (semanas 50-22 hasta 51-22) y por esa razón el reclamante no era elegible de recibir beneficios de desempleo para esas semanas y hasta que terminó la razón para la denegación (decisión # 152033). Decisión # 152033 se convirtió en final el 7 de febrero de 2023 sin que el reclamante hubiera presentado una aplicación para una audiencia. El 8 de abril de 2023, el reclamante presentó una aplicación tardía para una audiencia. La Jueza Administrativa Kangas revisó la aplicación tardía del reclamante y el 12 de julio de 2023, emitió la Orden No. 23-UI-230238, rechazando la aplicación del reclamante porque la aplicación era tarde. La orden también dió al reclamante la oportunidad de responder a un cuestionario antes del 26 de julio de 2023 sobre por qué el reclamante presentó su aplicación para una audiencia tarde.*

El 19 de julio de 2023, el reclamante presentó una respuesta oportuna al cuestionario sobre porque el había presentado tarde su aplicación para una audiencia. El 26 de julio de 2023, la Oficina de Audiencias Administrativas (OAH) envió al reclamante una carta indicando que, según la respuesta del reclamante, la Orden No. 23-UI-230238 fue cancelada y anulada, y que se programaría una audiencia para determinar si se permite la solicitud tardía de audiencia del reclamante y, de ser así, los méritos de la decisión # 152033. El 26 de julio de 2023, OAH mandó notificación que la audiencia estaba programada para el 10 de agosto de 2023. El 10 de agosto de 2023, ALJ Lucas llevó a cabo una audiencia, que fue interpretada en español, y el 11 de agosto de 2023 emitió la Orden No. 23-UI-232980, rechazando la solicitud de audiencia del reclamante como tardía sin buena causa, dejando la decisión # 152033 sin cambios. El 15 de agosto de 2023, el reclamante presentó una solicitud de revisión de la Orden No. 23-UI-232980 ante la Junta de Apelaciones de Empleo (EAB).

El 8 de septiembre de 2023, la EAB emitió la Decisión 2023-EAB-0916, confirmando la Orden No. 23-UI-232980. El 15 de septiembre de 2023, el reclamante presentó una solicitud oportuna de reconsideración de la Decisión 2023-EAB-0916 de EAB ante EAB. Esta decisión se emite de conformidad con la autoridad de EAB bajo ORS 657.290(3).

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is allowed. EAB Decision 2023-EAB-0916 is adhered to on reconsideration. Claimant's late request for hearing on the merits of Department decision # 152033 is dismissed because claimant did not show good cause to file the hearing request late.

CONCLUSIONES Y RAZONES: *La aplicación para reconsideración es permitida. Decisión EAB 2023-EAB-0916 es confirmada en reconsideración. La solicitud tardía del reclamante para una audiencia sobre los méritos de la decisión # 152033 del Departamento se rechaza porque el reclamante no demostró una buena causa para presentar la solicitud de audiencia tarde.*

ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." "Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice." OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless

it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

EAB Decision 2023-EAB-0916 affirmed Order No. 23-UI-232980, which dismissed claimant's late request for hearing on decision # 152033. Claimant filed a request for reconsideration of EAB Decision 2023-EAB-0916 consistent with the requirements set forth in OAR 471-041-0145. The request for reconsideration therefore is allowed. However, EAB Decision 2023-EAB-0916 is adhered to on reconsideration because claimant did not show that the decision contained an error of material fact or law, or unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice.

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.

Order No. 23-UI-232980 dismissed claimant's request for hearing on decision # 152033 because the request was filed late without good cause. Claimant's request for reconsideration did not assert that EAB erred in affirming this dismissal by, for example, arguing that his request for hearing had been filed timely, or that he had shown good cause for filing the request for hearing late. Instead, claimant's request for reconsideration only expressed disagreement with the merits of decision # 152033, which concluded that claimant was ineligible for benefits because he was unavailable for work. Claimant's Translated Reconsideration Request at 1. Neither EAB's decision nor the order under review considered the merits of decision # 152033, and they made no conclusions regarding whether claimant was available for work. Because claimant filed his request for hearing late without good cause, the issue of claimant's availability for work cannot be considered by EAB on appeal.

Claimant did not assert that EAB Decision 2023-EAB-0916 otherwise contained an error of material fact or law, or unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice. For these reasons, EAB Decision 2023-EAB-0916 is adhered to on reconsideration.

DECISION: Claimant's request for reconsideration is allowed. On reconsideration, EAB Decision 2023-EAB-0916 is adhered to, as explained herein.

***DECISIÓN:** Se permite la solicitud de reconsideración del reclamante. En la reconsideración, la Decisión EAB 2023-EAB-0916 es confirmada, como se explica en este documento.*

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

DATE of Service: October 27, 2023

FECHA: el 27 de octubre de 2023

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

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 الاستئناف 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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