

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0986

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On April 22, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had failed to provide information to the Department and therefore was not eligible for unemployment insurance benefits for the weeks of March 27, 2022 through April 9, 2022 (weeks 13-22 through 14-22) and until the reason for the denial had ended (decision # 93045). On May 12, 2022, decision # 93045 became final without claimant having filed a request for hearing. On November 23, 2022, claimant filed a late request for hearing on decision # 93045. ALJ Kangas considered claimant's request, and on March 23, 2023 issued Order No. 23-UI-219873, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 6, 2023. On April 7, 2023, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 23-UI-219873 with the Employment Appeals Board (EAB). On August 31, 2023, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late. This matter comes before EAB based upon claimant's April 7, 2023 application for review of Order No. 23-UI-219873.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's April 7, 2023 response to the appellant questionnaire, and has been 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 April 22, 2022, the Department mailed decision # 93045 to claimant's address on file with the Department. Decision # 93045 stated, "You have the right to appeal this

decision if you do not believe it is correct. Your request for appeal must be received no later than May 12, 2022.” Exhibit 1 at 2.

(2) On November 23, 2022, claimant called the Department and requested a hearing on decision # 93045. Exhibit 2 at 2.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing is dismissed.

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.

Under OAR 471-040-0005(2) (July 15, 2018), a request for hearing may be filed “[b]y mail, fax, e-mail, or other means as designated by Employment Department with the appealable document,” or “[i]n person at any publicly accessible Employment Department office in Oregon.”

The request for hearing on decision # 93045 was due by May 12, 2022. Because claimant did not file their request for hearing until November 23, 2022, the request was late. On their appellant questionnaire response, claimant stated that they did not remember when they received decision # 93045. EAB Exhibit 1 at 1. Claimant further explained, “All I remember is that I filed over the phone and I waited some time before calling again. The person I spoke to mentioned the request had not gone through. So we submitted it again.” EAB Exhibit 1 at 1. Claimant also expressed a concern that their weekly benefit amount had been calculated lower than they believed it should have been. EAB Exhibit 1 at 1.

In response to the question asking why they did not file the hearing request prior to the appeal deadline, claimant stated that “the first few times I would call and then be on hold for 4 hours and then the phone would disconnect... After being on hold so many times... I would give up.” EAB Exhibit 1 at 2. In response to the question asking what prompted them to file their request for hearing when they did, claimant stated, “I was not working consistently and needed to find a way to fix my unemployment. So I decided to see if there was something I could do. Plus, I wanted to see who had made a mistake with my benefit amount.” EAB Exhibit 1 at 2. Finally, of note, claimant explained that “I can say that if my benefit [amount] was normal it would’ve been more appealing to deal with being on hold for so long.” EAB Exhibit 1 at 2.

None of the above explanations indicate that claimant failed to file a timely request for hearing due to factors beyond their control. For instance, claimant did not assert either that they never received a copy of the administrative decision, or that they received it after the timely appeal deadline, such that they might have been unable to file a timely request for hearing due to not knowing about the decision. While it appears that claimant had some difficulty in reaching the Department via phone, and ultimately did file their request for hearing over the phone, OAR 471-040-0005(2) describes several means other than phone by which an individual may request a hearing. Claimant did not assert that they were unable to submit their request by these other means.

Based on their statement regarding phone hold times, it appears that claimant's delay in filing their request for hearing was at least partially the result of their believing that their weekly benefit amount was too low to justify the wait time, perhaps coupled with their failure to realize that other methods of filing a request for hearing were available to them. Although these were likely mistakes on claimant's part, they did not constitute an "excusable mistake" within the meaning of the administrative rules because they did not, for example, raise a due process issue, and were not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Because claimant did not show that they failed to file a timely request for hearing due to factors beyond their control or an excusable mistake, claimant has not met their burden to show that they had good cause for filing the late request for hearing. Therefore, claimant's late request for hearing on decision # 93045 must be dismissed under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 23-UI-219873 is affirmed.

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

DATE of Service: September 13, 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.

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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 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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