

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1103

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On June 1, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide information in accordance with the Department's rules and was therefore ineligible to receive unemployment insurance benefits for the week of May 8, 2022, through May 14, 2022 (week 19-22) and until the reason for the denial ended (decision # 135920). On June 21, 2022, decision # 135920 became final without claimant having filed a request for hearing. On July 20, 2022, claimant filed a late request for hearing.

ALJ Kangas considered claimant's request, and on October 20, 2022, issued Order No. 22-UI-205528, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 3, 2022. On November 1, 2022, claimant filed a timely response to the appellant questionnaire. On March 16, 2023, the Office of Administrative Hearings (OAH) mailed a letter to claimant stating that Order No. 22-UI-205528 was vacated and that a hearing would be scheduled to determine whether claimant had good cause to file his request for hearing late and, if so, the merits of decision # 135920. On September 25, 2023, ALJ Frank conducted a hearing at which the Department submitted an Attestation in lieu of attending, and on October 3, 2023, issued Order No. 23-UI-237546, re-dismissing claimant's request for hearing as late without good cause. On October 7, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On June 1, 2022, decision # 135920 was mailed to claimant at his mailing address of record on file with the Department. Decision # 135920 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 June 21, 2022." Exhibit 1 at 1.

(2) Claimant received decision # 135920 shortly after it was mailed. Claimant is a dyslexic person and was unable to fully read and understand decision # 135920.

(3) At some time between claimant's receipt of decision # 135920 and July 20, 2022, claimant went to a WorkSource office to obtain assistance in understanding the letter but was "pretty much" told, "Go home and just read it and follow the instructions." Audio Record at 11:30. Claimant left without understanding the substance of decision # 135920 or his appeal rights.

(4) Claimant later sought assistance from his wife, who read him at least a portion of decision # 135920. After receiving this assistance, claimant still did not understand that he had the right to request a hearing and that the deadline for doing so was June 21, 2022.

(5) On July 8, 2022, and July 11, 2022, claimant called the Department regarding his claim and the identity verification requirement at issue in decision # 135920. The Department's records of these calls show that claimant was given advice on completing identity verification, but the records did not mention discussion of decision # 135920 or claimant's appeal rights from that decision. Exhibit 4 at 2.

(6) On July 20, 2022, claimant again called the Department. According to the Department's notes, the purpose of the call was claimant "wanting to know why [his claim] was denied," and when told it was for failure to provide information, claimant "was upset and asked how to get this cleared up," and was advised to file an appeal online.¹ Later that day, claimant's wife filed a request for hearing online on his behalf.

CONCLUSIONS AND REASONS: Claimant's late request for hearing is allowed and a hearing on the merits of decision # 135920 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 file a request for hearing on decision # 135920 was June 21, 2022. Claimant filed his request for hearing on July 20, 2022. Accordingly, the request for hearing was late.

The order under review concluded that that because claimant's wife read decision # 135920 to him, claimant was not prevented from timely filing a request for hearing by an excusable mistake or circumstance beyond his reasonable control. Order No. 23-UI-237546 at 3. The record does not support this conclusion.

¹ EAB has taken notice of this fact which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

Claimant received decision # 135920 shortly after it was mailed, but due to his inability to read it, claimant did not understand the decision or his appeal rights. The record shows efforts claimant took to get assistance in understanding the decision, which included visiting a WorkSource office, calling the Department, and asking for help from his wife. The record is unclear as to precisely when claimant took these actions, however it can be inferred that because of his inability to read decision # 135920, claimant was unaware of the time-sensitive nature of the document. Claimant's subsequent calls to the Department, which demonstrated his lack of awareness as to both the substance of decision # 135920 and his ability to appeal it, suggest that the assistance he received from the WorkSource office and his wife was insufficient to overcome the barrier presented by his inability to read, and thus understand, the decision and appeal rights information himself. This barrier prevented claimant from timely filing his request for hearing and constituted a circumstance beyond his reasonable control.

This circumstance continued until July 20, 2023, when a Department representative explained to claimant, via telephone, the substance of decision # 135920 and his appeal rights from that decision. Claimant's wife filed an online request for hearing on his behalf later that day, which was within a "reasonable time" of when the circumstance that prevented timely filing ceased. Accordingly, claimant has shown good cause to extend the deadline for timely filing, and his late request for hearing is allowed. The matter is remanded for a hearing on the merits of decision # 135920.

DECISION: Order No. 23-UI-237546 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: November 16, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-237546 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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