

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1126

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On October 26, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to register for work in accordance with the Department's rules and was therefore ineligible to receive unemployment insurance benefits for the week of October 9, 2022, through October 15, 2022 (week 41-22) and until the reason for the denial had ended. On November 15, 2022, the October 26, 2022, administrative decision became final without claimant having filed a request for hearing. On December 3, 2022, claimant filed a late request for hearing.

ALJ Kangas considered claimant's request, and on April 5, 2023, issued Order No. 23-UI-221140, 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 19, 2023. On April 25, 2023, claimant filed a late response to the appellant questionnaire and a timely application for review with the Employment Appeals Board (EAB).¹ On October 17, 2023, ALJ Kangas mailed a letter to claimant stating that because the appellant questionnaire response was late, it would not be considered, and another order would not be issued. This matter comes before EAB based upon claimant's April 25, 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 consists of an email with attachments of claimant's application for review and 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.

¹ Claimant filed these documents electronically, but no timestamp was preserved in the record to establish when they were filed. As the record shows that the Office of Administrative Hearings (OAH) was in possession of them as of 6:07 a.m. on April 26, 2023, it is reasonable to infer that they were received—and therefore filed—the previous day, April 25, 2023. *See* EAB Exhibit 1 at 1; OAR 471-040-0005(4)(d) (July 15, 2018).

FINDINGS OF FACT: (1) On October 26, 2022, the Department mailed the October 26, 2022, administrative decision to claimant’s address of record on file with the Department. The October 26, 2022, administrative decision 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 11/15/2022.” Exhibit 1 at 1.

(2) At some time between November 8, 2022, and November 10, 2022, claimant received the October 26, 2022, administrative decision.

(3) On December 3, 2022, claimant filed a request for hearing on the October 26, 2022, administrative decision.

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.

The deadline to file a request for hearing on the October 26, 2022, administrative decision was November 15, 2022. Claimant’s request for hearing was filed December 3, 2022. Accordingly, the request for hearing was late.

Claimant wrote in their appellant questionnaire response that they received the October 26, 2022, administrative decision “[b]etween 11/08/22 – 11/10/22.” EAB Exhibit 1 at 4. Claimant also wrote in their response, “By the time I figured out there was a [*sic*] appeal process I jumped on completing the paperwork and calling several times to be sure I followed what I needed to. . . It appeared that I completed everything so by the time I found out it was denied for payment – I appealed.” EAB Exhibit 1 at 4-5. This suggests that claimant did not file a timely request for hearing, despite having received the October 26, 2022, administrative decision several days prior to the timely filing deadline, because claimant focused instead on completing the work registration requirements and did not understand the implications of failing to appeal the administrative decision. OAR 471-040-0010(1)(b)(B) provides that “[n]ot understanding the implications of a decision or notice when it is received” does not constitute good cause to extend the filing deadline. Accordingly, claimant has not shown good cause to file the late request for hearing. Claimant’s late request for hearing is therefore dismissed.

DECISION: Claimant’s late request for hearing is dismissed. Order No. 23-UI-221140 is affirmed.

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

DATE of Service: October 24, 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 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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