

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1157

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On September 27, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective August 28, 2022 (decision # 91955). On October 17, 2022, decision # 91955 became final without claimant having filed a request for hearing. On October 22, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on February 16, 2023, issued Order No. 23-UI-216356, dismissing claimant's request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 2, 2023. On February 19, 2023, claimant filed a timely response to the appellant questionnaire. On September 11, 2023, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 23-UI-216356 was cancelled and that a hearing would be scheduled to determine whether claimant had good cause to file her request for hearing late and, if so, the merits of decision # 91955. On September 26, 2023, ALJ Sachet-Rung conducted a hearing at which the Department submitted an Attestation in lieu of attending, and on September 27, 2023, issued Order No. 23-UI-236969, re-dismissing claimant's request for hearing as late without good cause and leaving decision # 91955 undisturbed. On October 17, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Decision # 91955, mailed on September 27, 2022 to claimant's mailing address on file with the Department, 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 October 17, 2022." Exhibit 1 at 2.

(2) Claimant received and read decision # 91955 shortly after it was mailed. At the time, claimant's father was hospitalized, and remained in the hospital until his death on October 9, 2022. Claimant "forgot about everything" because she "was so upset" at that time. Audio Record at 13:42. Some time on or between October 18, 2022 and October 22, 2022, "when everything was finished" regarding these events, claimant realized that she had missed the deadline to request a hearing. Audio Record at 13:50. Claimant filed her request for hearing on October 22, 2022.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing is allowed and a hearing on the merits of decision # 91955 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 decision # 91955 was October 17, 2022. Claimant filed her request for hearing on October 22, 2022, and therefore the request was late. The order under review concluded that claimant’s having forgotten the deadline to request a hearing due to being upset over her father’s illness and death did not constitute good cause to extend the deadline for timely filing. Order No. 23-UI-236969 at 3. The record does not support this conclusion.

Claimant testified that while she disagreed with decision # 91955 upon reading it, and therefore intended to appeal it, she forgot about the administrative decision and appeal deadline when her father died on October 9, 2022. Audio Record at 13:29. This death, and claimant’s resulting grief, were factors beyond claimant’s reasonable control that caused her to forget the administrative decision and appeal deadline, thus preventing timely filing. She has therefore shown good cause to extend the deadline for timely filing.

Claimant further testified that she only remembered decision # 91955 and the need to request a hearing on it after the timely filing deadline had passed, which happened on or between October 18, 2022 and October 22, 2022. The factors that prevented timely filing therefore ceased during this period. As claimant filed her late request for hearing on October 22, 2022, it was filed within a seven-day “reasonable time” of when the factors that prevented timely filing ceased. Accordingly, claimant’s late request for hearing is allowed, and a hearing on the merits of decision # 91955 is required.

For these reasons, Order No. 23-UI-236969 is reversed, claimant’s late request for hearing is allowed, and the matter is remanded for a hearing on the merits of decision # 91955.

DECISION: Order No. 23-UI-236969 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: November 28, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-236969 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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