

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1333

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On April 6, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 131922). On April 26, 2023, decision # 131922 became final without the employer having filed a request for hearing. On May 2, 2023, the employer filed a late request for hearing. ALJ Kangas considered the employer's request, and on September 14, 2023 issued Order No. 23-UI-235862, dismissing the request as late, subject to the employer's right to renew the request by responding to an appellant questionnaire by September 28, 2023. On September 29, 2023, the employer filed a late response to the appellant questionnaire and a timely application for review of Order No. 23-UI-235862 with the Employment Appeals Board (EAB). On December 18, 2023, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider the employer's questionnaire response or issue another order regarding this matter because the questionnaire response was late. This matter comes before EAB based upon the employer's September 29, 2023 application for review of Order No. 23-UI-235862.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the appellant questionnaire response the employer provided with their application for review, 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 6, 2023, the Department mailed decision # 131922 to the employer's address on file with the Department. Decision # 131922 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 April 26, 2023." Exhibit 1 at 2. Decision # 131922 also included a P.O. Box address, three telephone numbers, and a fax number for use in contacting the Department. Exhibit 1 at 1. The decision also

stated, “If you do not understand this decision, contact the Unemployment Insurance Center above immediately.” Exhibit 1 at 2.

(2) The employer received decision # 131922 on April 9, 2023. EAB Exhibit 1 at 1. At that time, the employer was experiencing staffing issues and was working “long hours,” seven days a week. EAB Exhibit 1 at 2.

(3) Prior to May 2, 2023, the employer’s long work hours interfered with the employer gathering information they believed they needed before requesting a hearing. EAB Exhibit 1 at 2. The employer also thought claimant’s unemployment insurance claim was dismissed. EAB Exhibit 1 at 2.

(4) On May 2, 2023, the employer checked decision # 131922 and realized a request for hearing on that decision would be late. EAB Exhibit 1 at 2. The employer filed a late request for hearing on decision # 131922 that day. EAB Exhibit 1 at 2.

(5) On May 18, 2023, The Department mailed the employer a letter advising that the employer was relieved of charges for benefits paid to claimant based on claimant’s unemployment insurance claim. EAB Exhibit 1 at 3.

CONCLUSIONS AND REASONS: The employer’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 request for hearing on decision # 131922 was due by April 26, 2023. Because the employer did not file their request for hearing until May 2, 2023, the request was late.

The employer failed to establish good cause to extend the deadline to request a hearing on decision # 131922. The employer received the administrative decision on April 9, 2023, which allowed a significant number of days to timely file a hearing request before the April 26, 2023 deadline. Although the employer was required to work long hours at the time, the employer did not establish that the press of long hours constituted a factor beyond their reasonable control that prevented them from filing by the deadline. The employer stated in their appellant questionnaire response that long work hours interfered with their ability to gather information they believed they needed before requesting a hearing. EAB Exhibit 1 at 2. However, decision # 131922 included numerous options for contacting the Department with any questions, including three telephone numbers. Exhibit 1 at 1. The decision also stated, “If you do not understand this decision, contact the Unemployment Insurance Center above immediately.” Exhibit 1 at 2. Given the contact information listed on decision # 131922 and the employer’s receipt of the decision with numerous days to gather information and make inquiries prior to the April 26, 2023 deadline, the employer failed to show that the long work hours they were experiencing amounted to a factor beyond their reasonable control.

Likewise, the employer stated on their appellant questionnaire response that they “[t]hought the claim was dismissed,” and attached a letter from the Department, dated May 18, 2023, advising that the employer was relieved of charges for benefits paid to claimant based on claimant’s unemployment insurance claim. EAB Exhibit 1 at 2, 3. Because the letter from the Department is dated May 18, 2023, which is after the employer filed their request for hearing, it is not evident how it could have caused the employer to fail to meet the April 26, 2023 filing deadline. Even if the employer learned that they had been relieved of charges sooner than May 18, 2023, the employer could have resolved any confusion by using the contact information listed on decision # 131922 to contact the Department for clarification.

Furthermore, although the employer’s failure to file a timely hearing request due to long work hours or confusion about being notified of a relief of charges was likely the result of a mistake on the employer’s part, it was not an “excusable mistake” within the meaning of the administrative rules. The employer’s mistake did not amount to an excusable mistake because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Because the employer failed to show that factors beyond their reasonable control or an excusable mistake prevented them from filing a hearing request on decision # 131922 by the April 26, 2023 deadline, the employer failed to establish good cause to extend the filing deadline beyond that date. Accordingly, the employer’s late request for hearing is dismissed.

DECISION: Order No. 23-UI-235862 is affirmed.

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

DATE of Service: December 21, 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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