

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1335

Reversed & Remanded

PROCEDURAL HISTORY: On May 18, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not actively seeking work during the weeks from April 2, 2023, through April 29, 2023, (weeks 14-23 through 17-23) and was therefore ineligible to receive unemployment insurance benefits for those weeks (decision # 84402). On June 7, 2023, decision # 84402 became final without claimant having filed a request for hearing. On November 2, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on November 14, 2023, issued Order No. 23-UI-241093, 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 28, 2023. On November 30, 2023, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 23-UI-241093 with the Employment Appeals Board (EAB). On December 20, 2023, ALJ Kangas mailed a letter to claimant stating that because the appellant questionnaire response was late, it would not be considered, and a further order would not be issued in the matter. This matter comes before EAB based upon claimant's November 30, 2023, application for review of Order No. 23-UI-241093.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's appellant questionnaire response 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 May 18, 2023, the Department mailed decision # 84402 to claimant at their address of record on file with the Department. Claimant did not receive it. On June 7, 2023, decision # 84402 became final without claimant having filed a request for hearing.

(2) On June 13, 2023, claimant called the Department to inquire about their claim and discussed decision # 84402 with a Department representative. That day, the Department mailed a copy of decision # 84402

to claimant at claimant's request. Department records do not indicate that claimant contacted the Department thereafter to say that they had not received the copy of decision # 84402.¹

(3) On November 2, 2023, claimant filed a late request for hearing on decision # 84402.

CONCLUSIONS AND REASONS: Further development of the record is needed to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 84402.

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.

To be timely, a request for hearing on decision # 84402 was due by June 7, 2023. Claimant filed their request for hearing on November 2, 2023. Accordingly, the request for hearing was late.

In claimant's appellant questionnaire response, they wrote that they were prevented from timely filing their request for hearing because they did not receive decision # 84402. EAB Exhibit 1 at 1. This is supported by the Department's record of claimant calling on June 13, 2023, and requesting that a copy of decision # 84402 be sent to them. Claimant's failure to receive decision # 84402 prior to June 7, 2023, was a factor beyond claimant's reasonable control that prevented timely filing. Therefore, claimant has shown good cause to extend the deadline for timely filing.

However, the record as presently developed is insufficient to conclude that claimant filed the late request for hearing within a reasonable time after the factor that prevented timely filing ceased. That a copy of decision # 84402 was mailed to claimant on June 13, 2023, at their request, and claimant did not contact the Department thereafter to say that the copy was not received, suggests that claimant may have received this copy in mid-June 2023 and the factor that prevented timely filing then ceased. Further development of the record is therefore needed to determine whether claimant's late request for hearing, filed November 2, 2023, was filed within a reasonable time. On remand, inquiry should be made into whether additional factors beyond claimant failing to initially receive decision # 84402 prevented timely filing, when all factors that prevented timely filing ceased, and whether claimant's late request for hearing was filed within a seven-day "reasonable time" after all such factors ceased.

For these reasons, Order No. 23-UI-241093 is reversed and the matter remanded for a hearing to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 84402.

¹ EAB has taken notice of these facts which are 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 facts will remain in the record.

DECISION: Order No. 23-UI-241093 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: January 11, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-241093 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

ខ្ញុំស្រឡាត់ – ចាំពិតសិននឹងមិនរក្សាទុកភារកិច្ចរបស់លោកអ្នកឡើយ។ បើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះទេ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

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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