

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0041

Reversed & Remanded

PROCEDURAL HISTORY: On November 13, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed a late claim for benefits for the week of October 22 through 28, 2023 (week 43-23) and was denied benefits for that week (decision # 130702). On December 4, 2023, decision # 103702 became final without claimant having requested a hearing. On December 5, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on December 13, 2023, issued Order No. 23-UI-243334, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by December 27, 2023. On December 28, 2023, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 23-UI-243334 with the Employment Appeals Board (EAB). On January 7, 2024, 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 regarding the matter. This matter comes before EAB based upon claimant's December 28, 2023, application for review of Order No. 23-UI-243334.

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 response to the appellant questionnaire attached to Order No. 23-UI-243334, 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.

FINDING OF FACT: (1) Decision # 130702, mailed to claimant on November 13, 2023, 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 December 4, 2023." Exhibit 1 at 2.

CONCLUSIONS AND REASONS: Order No. 23-UI-243334 is set aside and the matter remanded for further proceedings to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 130702.

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.

Pursuant to OAR 471-040-0010(1)(a)(A) and (b)(A), good cause includes failure to receive a document because the Employment Department or Office of Administrative hearings mailed it to an incorrect address despite having the correct address, but does not include failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal.

The deadline to request a hearing on decision # 130702 was December 4, 2023. Because claimant filed their request for hearing on December 5, 2023, the request was late. Claimant wrote in their appellant questionnaire response, in reference to decision # 130702, that "no letter was received." EAB Exhibit 1 at 2. Claimant's response explained that they learned about the decision "from other employees," who presumably received similar administrative decisions involving their WorkShare claims for week 43-23. EAB Exhibit 1 at 2. Claimant further wrote that decision # 130702 was "maybe delivered to the wrong address. One was updated twice on the phone." EAB Exhibit 1 at 2. If claimant did not receive decision # 130702 in the mail prior to the December 4, 2023, filing deadline, this may have constituted a factor beyond claimant's reasonable control that prevented timely filing. If it was not received because it was mailed to an incorrect address, a finding of good cause may depend on whether claimant had provided the correct address to the Department as required by OAR 471-040-0010(1)(b)(A). Further development of the record is therefore needed.

On remand, inquiry should be made into the factors that prevented timely filing, including why claimant did not receive decision # 130702 in the mail, whether the decision was mailed to the correct address, whether claimant had updated their address with the Department, and whether claimant was claiming benefits at the time of any address change. Further, while claimant filed their December 5, 2023, request for hearing online, claimant's questionnaire response indicated they filed a hearing request by mail, and that claimant "called earlier and was told [they] had to file via mail." EAB Exhibit 1 at 2. Inquiry should therefore include when and how claimant learned of their right to appeal decision # 130702, and whether they attempted to request a hearing prior to December 5, 2023.

For these reasons, Order No. 23-UI-243334 is set aside and the matter remanded for further proceedings to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 130702

DECISION: Order No. 23-UI-243334 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: January 31, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-243334 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.