

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0056

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On November 21, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective September 3, 2023 (decision # 114732). On December 11, 2023, decision # 114732 became final without claimant having filed a request for hearing. On December 12, 2023, claimant filed a late request for hearing on decision # 114732. ALJ Kangas considered claimant's request, and on December 21, 2023 issued Order No. 23-UI-243926, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 4, 2024. On January 5, 2024, claimant filed a late response to the appellant questionnaire and a timely application for review with the Employment Appeals Board (EAB). On January 7, 2024, ALJ Kangas mailed claimant a letter stating that because the appellant questionnaire response was late, it would not be considered and another order would not be issued regarding the matter.¹ This matter comes before EAB based upon claimant's January 5, 2024 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 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) Decision # 114732, mailed to claimant on November 21, 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 11, 2023." Exhibit 1 at 3.

¹ Due to a clerical error, a Certificate of Service bearing Order No. 24-UI-244902 was attached to the letter. The letter did not constitute an order under OAR 471-040-0030 (August 1, 2004).

(2) On November 22, 2023, the Department issued an administrative decision based, in part, on decision # 114732 (decision # 194157). Decision # 194157 stated that the deadline to file a request for hearing on that decision was “12/12/23.” EAB Exhibit 1 at 5. Claimant received both decisions and mistakenly believed that the deadline to request a hearing was December 12, 2023 for both decisions.

(3) On December 12, 2023, claimant filed a request for hearings on decisions # 114732 and 194157.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing is allowed and a hearing on the merits of decision # 114732 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 for filing a request for hearing on decision # 114732 was December 11, 2023. Because claimant filed their request for hearing on December 12, 2023, the request was late. Claimant wrote in their appellant questionnaire response, “I received two letters from [the Department]. I saw the letter with an appeal date of 12/12/23 and submitted my appeal on that date.” EAB Exhibit 1 at 2. Claimant’s receipt of both administrative decisions concerning the same work separation, presumably at the same time, caused claimant to erroneously believe that the deadline to appeal was the same as to both decisions. Under these circumstances, claimant’s belief that the deadline to appeal decision # 114732 was December 12, 2023 rather than December 11, 2023 constituted an excusable mistake. Therefore, claimant has shown good cause to extend the deadline for timely filing. The factor that prevented timely filing ceased on December 12, 2023, the date claimant believed was the filing deadline. As claimant filed the request for hearing that day, claimant did so within a “reasonable time.” Accordingly, claimant’s late request for hearing is allowed.

For these reasons, claimant’s late request for hearing on decision # 114732 is allowed and the matter is remanded for a hearing on the merits of that decision.

DECISION: Order No. 23-UI-243926 is set aside, and this matter remanded for further proceedings consistent with this order.

DATE of Service: February 8, 2024

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

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-243926 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، می توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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