

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0098

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On January 31, 2023, 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 January 1, 2023 (decision # 91258). On February 21, 2023, decision # 91258 became final without claimant having filed a request for hearing. On April 11, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on October 2, 2023, issued Order No. 23-UI-237324, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 16, 2023. On October 14, 2023, claimant filed a timely response to the appellant questionnaire. On December 6, 2023, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 23-UI-237324 was vacated and that a hearing would be scheduled to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 91258. On January 4, 2024, ALJ Smith conducted a hearing, and on January 8, 2024, issued Order No. 24-UI-244953, re-dismissing claimant's request for hearing as late without good cause and leaving decision # 91258 undisturbed. On January 22, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her February 21, 2024, argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). Claimant's February 19, 2024, argument, though served on the opposing party, also contained information that was not part of the hearing record because it related only to the merits of decision # 91258 rather than to the timeliness of her request for hearing. EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2). Claimant's February 19, 2024, argument was considered to the extent it was based on the record.

FINDINGS OF FACT: (1) Decision # 91258, mailed to claimant’s address of record on January 31, 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 February 21, 2023.” Exhibit 1 at 2. Claimant received decision # 91258 on or before February 13, 2023.

(2) Claimant disagreed with decision # 91258 but did not understand how to file an appeal. Claimant called the Department about requesting a hearing on February 13, 2023, and February 17, 2023. Claimant did not otherwise contact the Department during the timely filing period.

(3) Following the February 13, 2023, call, the Department representative with whom she spoke noted, “I advised claimant how to file an appeal via the online contact form. Claimant understood.” Audio Record at 16:00.

(4) Following the February 17, 2023, call, the Department representative with whom she spoke noted, “Advised claimant of the appeals process and advised to keep claiming weeks.” Audio Record at 16:27. Claimant believed that a request for hearing had been filed by the Department as a result of this call. The representative did not file a request for hearing.

(5) On April 11, 2023, claimant called the Department to inquire about the status of her appeal. During the call, claimant asked the representative to file an appeal on her behalf, and the representative did so via the Department’s online contact form. Exhibit 2 at 2.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing is allowed and a hearing on the merits of decision # 91258 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 request for hearing on decision # 91258 was due February 21, 2023. Claimant filed her request for hearing on April 11, 2023, and therefore the request was late. The order under review concluded that claimant lacked good cause for filing the late request for hearing because she was not prevented from timely filing by factors beyond her reasonable control or an excusable mistake. Order No. 24-UI-244953 at 2-3. The record does not support this conclusion.

Claimant testified that she received decision # 91258, though she did not remember when. Audio Record at 19:51. Claimant called the Department on February 13, 2023, to discuss appealing the decision which suggests that claimant received the decision sometime on or before that date. Claimant called the Department on February 13, 2023, because she disagreed with decision # 91258 and wanted to request a hearing on it but “didn’t know how.” Audio Record at 22:50. Claimant was instructed during the call on how to file a request for hearing online. Claimant did not do so, but testified she instead “called and tried to do it over the phone because I’m not techy.” Audio Record at 22:16. The Department’s note of this call stated that the “appeals process” was discussed with claimant but did not clarify what that entailed.

It can reasonably be inferred from this testimony, the Department's notes, and the fact that claimant did not otherwise have contact with the Department during the timely filing period, that this call occurred on February 17, 2023. In her testimony, claimant referred to having been told during a phone call to expect a notice of hearing in the mail. *See, e.g.*, Audio Record at 24:38. The record therefore suggests that, during the February 17, 2023, call to the Department, claimant came to believe that a request for hearing had been filed on her behalf, and that she therefore made no further efforts to file a request for hearing until learning otherwise. The Department's ambiguous note of what transpired during the call does not serve to refute that claimant may have been told that a request for hearing was being filed on her behalf, and at the very least, does not cast doubt on the reasonableness of her belief that one had been filed. This erroneous belief constituted an "excusable mistake" that prevented claimant from timely filing. Claimant has therefore shown good cause to extend the timely filing deadline.

The record suggests that claimant was unaware that a request for hearing had not been filed on February 17, 2023, as she believed, until her April 11, 2023, call to inquire about the status of her appeal. The factor that prevented timely filing had therefore not ceased until that day, when claimant was presumably informed that a request for hearing had not yet been filed. As the Department filed claimant's request for hearing that day, the request was filed within a "reasonable time" after the factor that prevented timely filing ceased.

For these reasons, claimant's late request for hearing is allowed and a hearing on the merits of decision # 91258 is required.

DECISION: Order No. 24-UI-244953 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: February 26, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-244953 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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