

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0169

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On February 7, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide information in accordance with the Department's rules and was ineligible for benefits for the weeks from March 21 through May 1, 2021 (weeks 12-21 through 17-21) and until the reason for the denial ended (decision # 577605). On February 28, 2022, decision # 577605 became final without claimant having filed a request for hearing. On June 29, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on October 5, 2023, issued Order No. 23-UI-237752, dismissing claimant's request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 19, 2023. On October 16, 2023, claimant filed a timely response to the appellant questionnaire. On December 6, 2023, the Office of Administrative Hearings (OAH) mailed a letter to claimant stating that Order No. 23-UI-237752 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 # 577605. On January 5, 2024, ALJ Smith conducted a hearing, and on January 18, 2024, issued Order No. 24-UI-245719, re-dismissing claimant's late request for hearing as late without good cause, leaving decision # 577605 undisturbed. Claimant filed a timely application for review of Order No. 24-UI-245719 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) Decision # 577605, mailed to claimant's address of record on file with the Department on February 7, 2022, 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 28, 2022." Exhibit 1 at 2. Decision # 577605 did not state what appellate rights were available after the filing deadline.

(2) Claimant last claimed benefits on September 17, 2021. On that date, she claimed benefits for the weeks of March 21, 2021, through May 1, 2021 (weeks 12-21 through 17-21). The Department did not pay benefits for those weeks. Claimant was aware by December 2021 that these benefits had not been paid, at least in part, because she had not verified her identity to the Department's satisfaction.

(3) In December 2021, claimant communicated with the Department on several occasions to attempt to provide requested identity information.

(4) In February and March 2022, claimant was frequently away from her residence and asked a neighbor to collect her mail. Some of this mail, including decision # 577605, was not given to claimant by the neighbor until approximately April 20, 2022.

(5) On February 10, 2022, claimant called the Department to inquire about providing the identity information it had requested. Claimant called several times in the following days, the last of which was February 18, 2022. The Department's note of the February 18, 2022, call states, in relevant part, "Because the [identification] is failed the only option is to file appeal. Adv clmnt of this. Gave clmnt OAH # to file appeal. Clmnt understood."¹

(6) On June 29, 2023, claimant went to a WorkSource office and presented documents that the representative found sufficient to verify her identity. According to the Department's notes of that encounter, claimant "asked about appeal" and was advised "to contact Office of Administrative Hearings or Unemployment for further information." Transcript at 6.

(7) On September 28, 2023, claimant again went to the WorkSource office and spoke to the same representative. That representative used the Department's website contact form to request that the Department contact claimant about appealing decision # 577605. This was considered by the Department as a request for hearing.

CONCLUSIONS AND REASONS: Claimant's late request for hearing is allowed and a hearing on the merits of decision # 577605 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.

OAR 471-040-0005 (July 15, 2018) provides, in relevant part:

(1) A Request for hearing may be filed on forms provided by the Employment Department or similar offices in other states. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed.

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.

(2) A request for hearing on an administrative decision related to the payment or amount of unemployment insurance benefits may be filed:

(a) By mail, fax, e-mail, or other means as designated by Employment Department with the appealable document; or

(b) In person at any publicly accessible Employment Department office in Oregon.

* * *

The order under review concluded that claimant's request for hearing was filed September 28, 2023, and that good cause did not exist to extend the deadline for timely filing to that date. Order No. 24-UI-245719 at 3-4. The record does not support these conclusions, but instead shows that the request for hearing was filed June 29, 2023, and that good cause exists to extend the deadline for timely filing to that date.

The Department considered claimant's request for hearing as having been filed on September 28, 2023, because the representative claimant spoke with at a WorkSource office that day made a request via the Department's website noting claimant's desire to appeal. Exhibit 2 at 1; Transcript at 5. However, claimant had expressed the same desire to appeal to the same representative, in the same WorkSource office, on June 29, 2023. As claimant's actions on September 28, 2023, were construed as filing a request for hearing, her essentially identical actions on June 29, 2023, should have been construed in the same way. Accordingly, claimant's interactions with the WorkSource representative on June 29, 2023, expressed a present intent to appeal decision # 577605 and therefore constituted a valid request for hearing on that administrative decision. Therefore, claimant's request for hearing was filed June 29, 2023. Because the request for hearing on decision # 577605 was due February 28, 2022, the request was late.

Claimant testified that she did not receive decision # 577605 until approximately April 20, 2022, when a neighbor, whom claimant had asked to collect her mail while she was frequently away from home, delivered the collected mail to claimant. Transcript at 14. This testimony contradicted claimant's appellant questionnaire response, in which she wrote that she had received decision # 577605 on February 9, 2022. Exhibit 3 at 2. However, claimant's detailed explanation at hearing as to why her receipt of the decision was delayed, and her memory of the timeframe in which she received it, is entitled to greater weight than her unexplained questionnaire response. Therefore, more likely than not, claimant did not receive decision # 577605 until April 20, 2022.

Though claimant had been advised to appeal decision # 577605 during a February 18, 2022, phone call with the Department, the record does not show that advisement included the deadline by which the appeal had to be filed. Similarly, the record does not show that claimant was advised that filing a request for hearing, rather than merely verifying her identity, was the only means by which she could potentially reverse the administrative decision's conclusion that she was ineligible for benefits for weeks 12-21 through 17-21. Claimant's failure to receive decision # 577605 within the timely filing period was thus a circumstance beyond claimant's reasonable control that prevented her from fully understanding her right to appeal and the implications of failing to appeal, which thereby prevented timely filing of her request for hearing. Accordingly, good cause has been shown to extend the deadline for timely filing.

The circumstance that initially prevented timely filing ceased when claimant received decision # 577605 on approximately April 20, 2022. While claimant, from that point forward, was on notice of what her appeal rights had been prior to the filing deadline and the implications of failing to appeal, the decision did not advise claimant that she had the right to file a late request for hearing. Claimant therefore focused only on trying to obtain various documents to prove her identity to the Department. These efforts apparently continued until June 29, 2023, when claimant walked into a WorkSource office with identity documents the Department determined satisfied their request for information. These facts demonstrate that even though the original circumstance that prevented claimant from filing her request for hearing ceased April 20, 2022, she was thereafter prevented from filing a late request for hearing based on her mistaken belief that her “case was closed because the time ran out” regarding decision # 577605. Transcript at 58. This constituted an “excusable mistake,” in that the record does not show that claimant was informed of her right to file a late request for hearing after the filing deadline had passed. This circumstance did not cease until June 29, 2023, when claimant made an in-person request for hearing at the WorkSource office. Therefore, claimant has shown good cause to extend the deadline for timely filing to June 29, 2023, and claimant’s request for hearing is allowed.

For these reasons, claimant’s late request for hearing is allowed and a hearing on the merits of decision # 577605 is required.

DECISION: Order No. 24-UI-245719 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: March 12, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-245719 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 desisyong ito.

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 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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