

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0266

Reversed & Remanded

PROCEDURAL HISTORY: On December 1, 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 April 9, 2023 (decision # 92028). On December 21, 2023, decision # 92028 became final without claimant having filed a request for hearing. On January 29, 2024, claimant filed a late request for hearing on decision # 92028. ALJ Kangas considered claimant's request, and on February 8, 2024, issued Order No. 24-UI-247644, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 22, 2024. On February 23, 2024, claimant filed a late response to the appellant questionnaire and a timely application for review with the Employment Appeals Board (EAB). On March 14, 2024, ALJ Kangas mailed a letter to the parties stating that because the appellant questionnaire response was late, it would not be considered and another order would not be issued in the matter. This matter comes before EAB based upon claimant's February 23, 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.

FINDING OF FACT: (1) Decision # 92028, mailed to claimant's address of record on file with the Department on December 1, 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 21, 2023." Exhibit 1 at 2.

CONCLUSIONS AND REASONS: Order No. 24-UI-247644 is set aside and this matter remanded for a hearing to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 92028.

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 # 92028 was due by December 21, 2023. Claimant filed their request for hearing on January 29, 2024, and therefore the request was late. Claimant wrote in their appellant questionnaire response that their request for hearing was not filed by the deadline because "I did not receive the mail," and that they filed it on January 29, 2024, because "I was informed my claim was denied." EAB Exhibit 1 at 2. This suggests that claimant may not have received decision # 92028 by the filing deadline. Claimant further wrote that they both received decision # 92028 and filed their request for hearing on "04/02/24." EAB Exhibit 1 at 1. As April 2, 2024, has not yet occurred, these responses must necessarily be inaccurate, and leave unanswered the questions of whether and when claimant received decision # 92028. Therefore, further development of the record is warranted to determine whether claimant's late request for hearing should be allowed.

On remand, inquiry should include whether claimant received decision # 92028 by the filing deadline and, if not, whether this was a factor beyond claimant's reasonable control or the result of an excusable mistake that caused the request for hearing to be filed late. If claimant did receive decision # 92028 or otherwise learned of the decision and their appeal rights therefrom by the filing deadline, inquiry should be made as to whether any other factor beyond claimant's reasonable control or an excusable mistake delayed timely filing of the request for hearing.

Further, if good cause is found to extend the deadline for timely filing, additional inquiry should be made to determine whether the late request for hearing was filed within a "reasonable time" of when the factors preventing timely filing ceased.

For these reasons, Order No. 24-UI-247644 is set aside and this matter remanded for a hearing to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 92028.

DECISION: Order No. 24-UI-247644 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 29, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-247644 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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