

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0347

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On February 4, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving benefits effective April 5, 2020 (decision # 110355). On February 24, 2021, decision # 110355 became final without claimant having filed a request for hearing. On May 22, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on January 8, 2024, issued Order No. 24-UI-244930,¹ dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 22, 2024.

On January 22, 2024, claimant filed a timely appellant questionnaire response. On February 16, 2024, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 24-UI-244930 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 # 110355. On March 20, 2024, ALJ Frank conducted a hearing, and on March 21, 2024, issued Order No. 24-UI-250658, re-dismissing claimant's request for hearing as late without good cause, leaving decision # 110355 undisturbed. On April 8, 2024, claimant filed an application for review of Order No. 24-UI-250658 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Decision # 110355, mailed to claimant's address of record on file with the Department on February 4, 2021, 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 24, 2021." Exhibit 1 at 2. Claimant did not receive decision # 110355 in the mail.

(2) In March 2023, claimant received correspondence from the Department regarding an overpayment of benefits which included a copy of decision # 110355. Claimant had previously been unaware of the issuance of decision # 110355. Claimant was not aware that he could file a late request for hearing on

¹ This amended order was issued to correct errors in claimant's mailing address. Order No. 24-UI-244930 at 1.

decision # 110355 and did not understand the time limit for doing so. Instead, he filed a request to waive recovery of the overpayment, which was denied.

(3) On May 22, 2023, claimant consulted an attorney about the overpayment. He was advised of his right to file a late request for hearing on decision # 110355 and that it had to be filed “within so many days.” Audio Record at 15:17. Claimant filed his late request for hearing on decision # 110355 the same day.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing on decision # 110355 is allowed and a hearing on the merits 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 # 110355 was due by February 24, 2021. Claimant filed his request for hearing on May 22, 2023, and it therefore was late. The order under review concluded that while a factor beyond claimant’s reasonable control prevented timely filing, he did not file the request within a “reasonable time” after the factor that prevented timely filing ceased. Order No. 24-UI-250658 at 3. The record does not support that the factor that prevented timely filing ceased before the day claimant’s late request for hearing was filed.

Claimant testified that he did not receive decision # 110355 when it was mailed in February 2021. Audio Record at 11:33. He further testified that he was living at the address to which it was mailed at the time, which suggests that the failure of decision # 110355 to be delivered was a factor beyond claimant’s reasonable control. Audio Record at 12:44. As claimant was not aware of decision # 110355 or his appeal rights prior to the timely filing deadline because the decision was not delivered as addressed, he has shown good cause to extend the deadline for timely filing.

Claimant ultimately received a copy of decision # 110355 in March 2023 while he was in the process of appealing or seeking waiver of one or more overpayments related to decision # 110355. However, the factor that prevented timely filing did not cease at that time. While decision # 110355 contains an explanation of the right to request a hearing by February 24, 2021, it does not explain the right to file a *late* request for hearing after that date, nor does it explain that such a request must be filed within seven days of when the factor that prevented timely filing ceased. Exhibit 1 at 2. It can reasonably be inferred that claimant, unaware of his right to file a late request for hearing, continued to pursue appeal or waiver of the overpayment rather than requesting a hearing on decision # 110355. Claimant explained in his late request for hearing, filed May 22, 2023, that he had spoken to an attorney earlier that day who had advised him of his right to file a late request for hearing. Exhibit 2 at 1. Therefore, the factor that prevented timely filing did not cease until claimant was advised of his right to file a late request for hearing on May 22, 2023. Because his request was filed the same day, it was filed within a “reasonable time” after the factor that prevented timely filing ceased. Accordingly, claimant’s late request for hearing is allowed.

For these reasons, claimant's late request for hearing is allowed and the matter is remanded for a hearing on the merits of decision # 110355.

DECISION: Order No. 24-UI-250658 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: May 22, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-250658 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 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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