

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0427

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On February 16, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective November 26, 2023 (decision # 105848). On March 7, 2024, decision # 105848 became final without claimant having filed a request for hearing. On March 12, 2024, claimant filed a late request for hearing. ALJ Scott considered claimant's request, and on March 27, 2024 issued Order No. 24-UI-251001, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 10, 2024. On March 30, 2024, claimant filed a timely response to the appellant questionnaire. On April 8, 2024, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 24-UI-251001 was vacated and that a new hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # 105848. On April 22, 2024, ALJ Mellor conducted a hearing at which both the employer and the Department failed to appear, and on April 29, 2024 issued Order No. 24-UI-253147, dismissing claimant's late request for hearing and leaving decision # 105848 undisturbed. On May 7, 2024, claimant filed an application for review of Order No. 24-UI-253147 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted written argument to EAB. Claimant's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

The parties may offer new information, such as the new information contained in claimant's written argument, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand

hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) In February 2023, claimant suffered a stroke. While being treated for the stroke, claimant learned that he had previously suffered from three other strokes. The strokes caused claimant to become more forgetful. Claimant subsequently began forgetting, for instance, appointments he had made and where he left objects. Claimant attempted to compensate for his memory lapses by using strategies such as setting reminders for himself and writing down important events.

(2) During the relevant period, claimant's elderly mother was in the early stages of dementia. This resulted in claimant's mother calling him between two and ten times every day because she had forgotten that she had called him. Claimant was appointed his mother's trustee.

(3) During the relevant time period, claimant's brother, who suffered from physical and mental health issues, was experiencing homelessness and substance abuse issues. Although claimant was not his brother's legal custodian, he acted as his brother's "responsible person," handling financial and administrative matters for him. Audio Record at 13:38.

(4) On February 16, 2024, the Department mailed decision # 105848 to claimant's address on file with the Department. Decision # 105848 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 March 7, 2024." Exhibit 1 at 2.

(5) In late February 2024, claimant's brother, living in California, attempted suicide. For approximately two weeks afterwards, claimant regularly spent time each day working with health authorities in California to help his brother get care.

(6) Claimant received decision # 105848 in the mail and placed it in on a stack of other correspondence that he meant to attend to. However, claimant was distracted by his mother's and brother's needs, and he forgot about the decision. Claimant did not set a reminder for himself to attend to the matter. On March 12, 2024, claimant sorted through his stack of correspondence, realized that he had missed the appeal deadline for decision # 105848, and filed his request for hearing that day.

CONCLUSIONS AND REASONS: Order No. 24-UI-253147 is reversed and this matter remanded for a hearing on the merits of decision # 105848.

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 # 105848 was due by March 7, 2024. Because claimant did not file his request until March 12, 2024, the request was late. Claimant filed his request late because he had

placed the administrative decision with a pile of other correspondence and, because he had been distracted by serious family matters, forgot to attend to it until after the timely filing deadline had passed. The order under review concluded that this did not constitute good cause because while claimant was handling matters relating to his mother and brother's affairs, "such matters did not consume all, or a majority of claimant's time"; and because "while claimant was aware of his own memory concerns and has employed strategies to cope with them, such as writing information down or calendaring deadlines, he did not employ such strategies here." Order No. 24-UI-253147 at 3. The record does not support this conclusion.

Claimant's failure to timely file his request for hearing was the result of a combination of three separate issues: his own memory problems stemming from his medical condition, the needs of his mother, and the needs of his brother. The order under review suggested that claimant had sufficient time to appeal decision # 105848 because handling his mother's and brother's needs did not consume the majority of claimant's time. While this may be true, it misconstrues the reason for claimant's failure to timely file. It was not a lack of *time* that prevented claimant from timely filing, but rather a lack of capacity to simultaneously manage his mother's and brother's needs while also attending to his own needs, owing to the effects of claimant's medical condition. When viewed as a whole, the combination of factors that distracted claimant from attending to decision # 105848 (or setting a reminder to do so) was such that his failure to do so was the result of, at worst, an excusable mistake. Additionally, the factors which prevented claimant's timely filing ceased on the day he reviewed and appealed decision # 105848. As such, claimant filed the late request for hearing within a reasonable time.

For the above reasons, claimant had good cause for failing to file a timely request for hearing, and filed his late request for hearing within a reasonable time. Claimant's late request for hearing on decision # 105848 therefore is allowed, and claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 24-UI-253147 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 14, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-253147 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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