

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0572

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On May 29, 2024, 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 7, 2024¹ (decision # L0004328070). On June 18, 2024, decision # L0004328070 became final without claimant having filed a request for hearing. On June 22, 2024, claimant filed a late request for hearing. ALJ Kangas considered the request, and on July 18, 2024, issued Order No. 24-UI-259430, dismissing the request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 1, 2024. On August 4, 2024, claimant filed a late response to the appellant questionnaire and a timely application for review with the Employment Appeals Board (EAB).

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.

CONCLUSIONS AND REASONS: Order No. 24-UI-259430 is set aside and the matter remanded for a hearing to determine whether claimant filed a timely request for hearing, or the late request for hearing should be allowed, and, if so, the merits of decision # L0004328070.

¹ Decision # L0004328070 stated that claimant was denied benefits from January 7, 2024, to January 4, 2025. However, the end date of the disqualification appears to be error because disqualifications from benefits under ORS 657.176 continue until the individual has earned, subsequent to the week in which the disqualification began, four times their weekly benefit amount in subject employment. *See* ORS 657.176(2). As such, it is presumed that the Department intended to disqualify claimant from benefits beginning January 7, 2024, and until they earned four times their weekly benefit amount in subject employment.

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 # L0004328070 was due by June 18, 2024. Claimant's request for hearing was filed on June 22, 2024, and was therefore late.² However, claimant wrote in their appellant questionnaire response that they filed a request for hearing on decision # L0004328070 on May 29, 2024, using the Department's Frances Online system. EAB Exhibit 1 at 1. Claimant further explained that they sent the letter dated June 15, 2024 (and postmarked June 22, 2024), which was construed as a late request for hearing, after failing to receive a response to the May 29, 2024, request. EAB Exhibit 1 at 1. This suggests that claimant may have filed a timely request for hearing, or had good cause for the late filing. Further development of the record is therefore warranted.

On remand, inquiry should be made into whether claimant filed a timely request for hearing using Frances Online on May 29, 2024. As claimant stated in the questionnaire response that confirmation of this filing could still be seen within Frances Online, claimant may wish to submit a screenshot or other documentary evidence of the filing by following the directions given with the notice of hearing. Further, if the evidence on remand suggests that claimant reasonably believed that they filed a request for hearing on May 29, 2024, but the request was not actually filed, additional inquiry should be made into the circumstances that prevented the request from being filed and whether factors beyond claimant's reasonable control or an excusable mistake prevented timely filing thereafter. If good cause is found to extend the deadline for timely filing, because claimant's June 22, 2024, request for hearing was filed within seven days of the timely filing deadline, it was necessarily filed within a "reasonable time."

For these reasons, Order No. 24-UI-259430 is set aside and the matter remanded for a hearing to determine whether claimant filed a timely request for hearing, or the late request for hearing should be allowed, and, if so, the merits of decision # L0004328070.

DECISION: Order No. 24-UI-259430 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: August 13, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-259430 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

² Though the request for hearing was dated by claimant June 15, 2024, it was postmarked June 22, 2024. Exhibit 2 at 4, 6. Therefore, under OAR 471-040-0005(4)(b) (July 15, 2018), June 22, 2024 is the filing date.

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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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