

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0613

Reversed
Request for Hearing Timely Filed
Merits Hearing Required

PROCEDURAL HISTORY: On July 9, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment benefits (decision # L0005067637).¹ On July 29, 2024, claimant filed a timely request for hearing, which the Department mistakenly construed as late.

ALJ Kangas considered claimant's hearing request that had been erroneously assigned an untimely filing date, and on August 1, 2024, issued Order No. 24-UI-261267, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 15, 2024. On August 21, 2024, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 24-UI-261267 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 response to the appellant questionnaire, 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.

¹ Decision # L0005067637 stated that claimant was denied benefits from June 2, 2024 through May 31, 2025. However, the beginning date of the disqualification appears to be an error because the decision states that claimant quit work on May 30, 2024, and disqualifications are effective beginning the Sunday of the week the work separation occurs, which in this case was May 26, 2024. Likewise, 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 May 26, 2024 and until they earned four times their weekly benefit amount in subject employment.

FINDINGS OF FACT: (1) On July 9, 2024, the Department mailed decision # L0005067637 to claimant’s address on file with the Department. Decision # L0005067637 stated, “You have the right to appeal our decision and request a hearing if you believe our decision is wrong. We must receive your request for a hearing no later than **July 29, 2024.**” Exhibit 1 at 2 (emphasis in original).

(2) On July 29, 2024, claimant filed a request for hearing on decision # L0005067637 by sending an electronic message to the Department using the Department’s Frances Online system. EAB Exhibit 1 at 8.

(3) The Department did not recognize that claimant had filed their request for hearing on July 29, 2024. The Department incorrectly regarded claimant’s request for hearing as having been filed on July 30, 2024, and therefore considered the request for hearing to be late. Exhibit 2 at 1-2.

CONCLUSIONS AND REASONS: Order No. 24-UI-261267 is reversed. Claimant’s request for hearing was timely filed, and a hearing on the merits of decision # L0005067637 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. Under OAR 471-040-0005(1) (July 15, 2018), “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.” Furthermore, “A request for hearing on an administrative decision related to the payment . . . of . . . benefits” may be filed “[b]y mail, fax, e-mail, or other means designated by [the] Employment Department[.]” OAR 471-040-0005(2)(a).

On July 29, 2024, claimant sent a message to the Department using the Department’s Frances Online system. EAB Exhibit 1 at 8. This message stated in its subject line, “Appeal – Request hearing”; listed the letter ID number of the administrative decision at issue in this case with one extra digit inadvertently added;² provided dates on which claimant was not available for a hearing; and stated in the first line of the body of the message, “I do want to advocate more to this appeal or request for hearing.” EAB Exhibit 1 at 1.

Thus, it is evident that, on July 29, 2024, which was within 20 days after the date decision # L0005067637 was mailed, claimant filed a hearing request by sending an electronic message to the Department that specifically requested a hearing on decision # L0005067637. Claimant therefore filed a timely request for hearing, and claimant is entitled to a hearing on the merits of decision # L0005067637.

DECISION: Order No. 24-UI-261267 is set aside, and this matter remanded for further proceedings consistent with this order.

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

² The letter ID number of the administrative decision in this case is “L0005067637”. In claimant’s July 29, 2024 message, they wrote “L00050676637”, inadvertently adding an extra “6”. EAB Exhibit 1 at 8. The error is immaterial because it is clear that claimant was referencing the administrative decision in this case.

DATE of Service: September 6, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-261267 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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