

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0676

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On December 14, 2020, the Oregon Employment Department (the Department) served notice of a wage and potential benefit report (WPBR) concluding that claimant had insufficient earnings to establish a claim for regular unemployment insurance (regular UI) benefits. On December 24, 2020, the December 14, 2020, WPBR became final without claimant having filed a request for hearing. On May 25, 2024, claimant filed a late request for hearing. ALJ Kangas considered the request, and on September 5, 2024, issued Order No. 24-UI-265025, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 19, 2024. On September 20, 2024, claimant filed a late appellant questionnaire response 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.

FINDINGS OF FACT: (1) The December 14, 2020, WPBR, mailed to claimant's address of record on file with the Department on that date, stated, "This report becomes final unless you request redetermination of the report or request a hearing within 10 days." Exhibit 1 at 26.

(2) In 2020, claimant "was homeless with no mailing address or internet[.]" EAB Exhibit 1 at 1. Claimant therefore did not receive the December 14, 2020, WPBR when it was mailed.

(3) On or around May 1, 2024, claimant received a copy of the December 14, 2020, WPBR.

(4) On May 25, 2024, claimant filed a request for hearing that was construed as a late request for hearing on the December 14, 2020, WPBR.¹

CONCLUSIONS AND REASONS: Claimant’s late request for hearing is dismissed.

ORS 657.266(5) provides that the Department’s initial determination on a new claim for benefits becomes final unless a party files a request for hearing within 10 days after the date the determination is mailed. ORS 657.875 provides that the 10-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 10-day deadline for claimant to file a request for hearing on the December 14, 2020, WPBR was December 24, 2020. Because claimant did not request a hearing until May 25, 2024, the request was late. Claimant wrote in their appellant questionnaire response that they received the December 14, 2020, WPBR “approximately 05/01/2024.” EAB Exhibit 1 at 1. Claimant also wrote, “In 2020 I was homeless with no mailing address or internet so I knew nothing of the original decision.” EAB Exhibit 1 at 1.

Even assuming that claimant failed to timely receive the December 14, 2020, WPBR in the mail due to circumstances beyond claimant’s reasonable control, which prevented timely filing of a request for hearing, it can reasonably be inferred that these circumstances ended no later than May 1, 2024, when claimant received a copy of the WPBR. As claimant’s late request for hearing was filed more than seven days later, on May 25, 2024, it was not filed within a “reasonable time” after the circumstances that prevented timely filing ended. Therefore, even if good cause existed to extend the deadline for timely filing, claimant’s late request for hearing is subject to dismissal because it was not filed within a reasonable time.

For these reasons, claimant’s late request for hearing on the December 14, 2020, WPBR is dismissed.

DECISION: Order No. 24-UI-265025 is affirmed.

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

DATE of Service: October 9, 2024

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the

¹ It appears from claimant’s late request for hearing that claimant may have instead intended to appeal a May 4, 2021, Notice of Determination for Pandemic Unemployment Assistance (PUA) which concluded that he was ineligible for PUA benefits effective December 27, 2020, due to failing to provide documentary proof of employment or self-employment. Claimant may wish to file a late request for hearing on that decision if claimant believes that they have good cause for the late filing and files the request within a seven-day “reasonable time” after the circumstances that prevented timely filing ended.

'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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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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