

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0698

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On May 17, 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 March 31, 2024 (decision # L0004189416). On June 6, 2024, decision # L0004189416 became final without claimant having filed a request for hearing. On June 9, 2024, claimant filed a late request for hearing on decision # L0004189416. ALJ Kangas considered claimant's request, and on July 2, 2024, issued Order No. 24-UI-257933, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 16, 2024. On July 15, 2024, claimant filed a timely response to the appellant questionnaire. On September 16, 2024, ALJ Fraser conducted a hearing at which the Department failed to appear, and on September 17, 2024, issued Order No. 24-UI-266429, re-dismissing claimant's request for hearing as late without good cause and leaving decision # L0004189416 undisturbed. On October 2, 2024, claimant filed an application for review of Order No. 24-UI-266429 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 consists of claimant's response to the appellant questionnaire and included written statement,¹ which is necessary to complete the

¹ With her appellant questionnaire response, claimant also included several documents which appeared to relate to the merits of decision # L0004189416. EAB did not consider these documents when reaching this decision because they were not relevant and material to EAB's determination of whether claimant's late request for hearing on decision # L0004189416 should be allowed. See ORS 657.275(2) and OAR 471-041-0090(1)(b)(A). If claimant wishes to have these documents considered at the hearing on the merits of decision # L0004189416, she must follow the instructions on the notice of the remand hearing regarding documents she wishes 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. At that time, it will be determined if the new information will be admitted into the record.

record. This evidence 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.

Additionally, Exhibits 1 and 2 were each entered into the record as multiple documents. As a clerical matter, EAB has combined all Exhibit 1 documents into a single marked document, and has done the same for all Exhibit 2 documents. Copies of those combined exhibits are provided to the parties with this decision.

WRITTEN ARGUMENT: Claimant filed written arguments on October 2 and October 10, 2024. EAB did not consider either of claimant’s written arguments when reaching this decision because she did not include statements declaring that she provided copies of her arguments to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) On May 17, 2024, the Department mailed decision # L0004189416 to claimant’s address on file with the Department. Decision # L0004189416 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 **June 6, 2024.**” Exhibit 3 at 14 (emphasis in original).

(2) On or around May 17, 2024, claimant received decision # L0004189416, disagreed with it, and decided to file a request for hearing on it. At the time, claimant was packing her belongings in preparation for a move into a considerably smaller house. On May 22, 2024, claimant contacted the Department via Frances Online to ask for help, and a Department representative responded by advising claimant of how to file a request for hearing. Another Department representative contacted claimant later, and the communications claimant had with that representative led her to believe that she had filed a timely request for hearing. Claimant “submitted multiple attachments” to communications with that representative. EAB Exhibit 1 at 2.

(3) On May 27, 2024, claimant’s father was hospitalized with a terminal illness. On June 1, 2024, claimant moved houses. On June 5, 2024, claimant’s father was transferred from his local hospital to an intensive-care unit. Claimant spent a significant amount of time with her father while he was in the hospital. Additionally, claimant was suffering from medical concerns of her own at the time. The combined stress of the move, claimant’s father’s terminal illness, and claimant’s own medical concerns “severely affected [her] capacity to manage [her] legal and personal affairs in a timely manner.” EAB Exhibit 1 at 1.

(4) On June 7, 2024, claimant met with a representative at a WorkSource Oregon office. At that time, the WorkSource representative told claimant that she had not filed a request for hearing on decision # L0004189416. Until that point, claimant did not know that she had not filed a request for hearing.

(5) On June 9, 2024, claimant filed a late request for hearing on decision # L0004189416.

CONCLUSIONS AND REASONS: Order No. 24-UI-266429 is reversed and this matter remanded for a hearing on the merits of decision # L0004189416.

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 # L0004189416 was due by June 6, 2024. Because claimant did not file her request for hearing until June 9, 2024, the request was late. However, the record shows that claimant had good cause for filing the late request for hearing, and that she filed it within a reasonable time after the factors which prevented a timely filing had ceased.

Claimant received decision # L0004189416 promptly after it was issued, attempted to file a request for hearing on it shortly thereafter, and came to incorrectly believe that she had actually filed a request for hearing. Claimant's diligence in attempting to file the request for hearing shortly after she received it, including submitting "multiple attachments" in connection with that process, suggests that she was unable to follow the directions necessary to file the request for hearing, despite substantial efforts to comply. This is further supported by the various serious personal matters that were affecting claimant's ability to manage her affairs at the time. Thus, claimant failed to file a timely request for hearing on decision # L0004189416 due to an excusable mistake.

Further, claimant filed her late request for hearing within a reasonable time after the factors which prevented a timely filing had ended. On June 7, 2024, claimant learned that she had not successfully filed a request for hearing. Two days later, on June 9, 2024, claimant filed her request. As such, she did so within the seven-day "reasonable time" period required by OAR 471-040-0010.

For the above reasons, claimant had good cause for failing to file a timely request for hearing, and filed her late request for hearing within a reasonable time. Claimant's late request for hearing on decision # L0004189416 therefore is allowed, and claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 24-UI-266429 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: October 22, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-266429 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

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