

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0749

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On January 31, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide information to verify his identity and was ineligible for benefits for the weeks from July 18 through August 21, 2021 (weeks 29-21 through 33-21) and until the reason for the denial ended (decision # 575438). On February 22, 2022, decision # 575438 became final without claimant having filed a request for hearing. On September 28, 2022, claimant filed a late request for hearing. ALJ Kangas considered the request, and on January 18, 2023, issued Order No. 23-UI-212981, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 1, 2023. On February 6, 2023, claimant filed a late appellant questionnaire response and a timely application for review of Order No. 23-UI-212981 with the Employment Appeals Board (EAB).¹ Also on February 6, 2023, ALJ Kangas mailed a letter stating that because the appellant questionnaire response was filed late, it would not be considered or another order issued regarding the matter. This matter comes before EAB based upon claimant's February 6, 2023, application for review of Order No. 23-UI-212981.

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.

¹ Both documents were filed simultaneously with the Office of Administrative Hearings (OAH), which determined the date of filing with regard to the appellant questionnaire response to be February 6, 2023. February 6, 2023 Letter from ALJ Kangas at 1. EAB likewise determined the date of filing of the application for review to be February 6, 2023, under OAR 471-041-0065(1)(d) and (2) (May 13, 2019). See EAB Exhibit 1 at 1.

FINDINGS OF FACT: (1) Decision # 575438, mailed to claimant’s address of record on file with the Department on January 31, 2022, 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 February 22, 2022.” Exhibit 1 at 2. Claimant was “homeless at that time” and received mail “in a place that hands out mail to a community of people all together 3 days out of the week.” EAB Exhibit 1 at 2. As a result, claimant did not receive decision # 575438.

(2) On September 20, 2021, a Department representative noted that claimant had contacted them about difficulties completing identity verification. Claimant had further contacts with the Department over the following year regarding completing that requirement. The Department later noted that claimant completed identity verification on September 16, 2022. On September 22, 2022, a representative noted that they spoke with claimant and told him that he had been denied benefits for failing to timely verify his identity and that he had the right to request a hearing.²

(3) On September 28, 2022, claimant filed a late request for hearing on decision # 575438.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing is allowed, and a hearing on the merits of decision # 575438 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. 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 # 575438 was due by February 22, 2022. Because claimant’s request for hearing was filed on September 28, 2022, the request was late.

Claimant’s appellant questionnaire response indicated that he did not receive decision # 575438 because due to his living situation, he did not have access to reliable mail delivery. This was a circumstance beyond claimant’s reasonable control that likely prevented him from filing a timely request for hearing. The Department’s records suggest that claimant was aware of the identity verification requirement at issue in the decision and made sporadic attempts to complete it from September 2021 through September 2022. However, the record shows that claimant was unaware of the issuance of decision # 575438 until after he completed the identity verification requirement on September 16, 2022, and contacted the Department on September 22, 2022, to determine why he had not received benefits after completing it. According to the Department’s records, claimant was informed at that time of the substance of decision # 575438 and his right to file a late request for hearing on that decision. Claimant therefore has shown good cause to extend the filing deadline.

² EAB has taken notice of these facts which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

The circumstances that prevented timely filing ended on September 22, 2022, when claimant was made aware of the administrative decision and his right to file a late request for hearing. Because claimant filed the late request for hearing six days later, on September 28, 2022, it was filed within the seven day “reasonable time” period. Accordingly, claimant’s late request for hearing is allowed, and a hearing on the merits of decision # 575438 is required.

DECISION: Order No. 23-UI-212981 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 30, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-212981 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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