

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0758

Reversed & Remanded

PROCEDURAL HISTORY: On June 27, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide information in accordance with the Department's rules and was therefore ineligible to receive unemployment insurance benefits effective June 2, 2024 (decision # L0004770181). On July 17, 2024, decision # L0004770181 became final without claimant having filed a request for hearing. On August 25, 2024, claimant filed a late request for hearing. ALJ Kangas considered the request, and on August 30, 2024, issued Order No. 24-UI-264374, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 13, 2024. On September 30, 2024, claimant filed a late response to the appellant questionnaire. ALJ Kangas reviewed the response, and on October 16, 2024, issued Order No. 24-UI-269658, canceling Order No. 24-UI-264374, concluding that the appellant questionnaire response would not be considered because it was late, and re-dismissing claimant's late request for hearing on decision # L0004770181. On October 25, 2024, claimant filed an application for review of Order No. 24-UI-269658 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Decision # L0004770181, mailed to claimant's address of record on file with the Department on June 27, 2024, 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 17, 2024.**" Exhibit 1 at 2 (emphasis in original). Claimant did not receive decision # L0004770181.

(2) On August 16, 2024, claimant received a billing statement from the Department seeking to recover an overpayment of benefits.

(3) On August 25, 2024, claimant filed a late request for hearing on decision # L0004770181.

CONCLUSIONS AND REASONS: Order No. 24-UI-269658 is set aside, and this matter remanded for a hearing to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # L0004770181.

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. Under OAR 471-040-0010(1)(b)(A), "good cause" does not include failure to receive a document due to not notifying the Department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal.

The request for hearing on decision # L0004770181 was due by July 17, 2024. Because claimant filed their request for hearing on August 25, 2024, the request was late. Claimant wrote in their late request for hearing that they "were never notified about this [decision] until a letter I received on August 16th asking for a payment." Exhibit 2 at 4. If claimant failed to receive decision # L0004770181, this may have been a factor beyond claimant's reasonable control that prevented timely filing of the request for hearing. Further development of the record is therefore warranted.

On remand, inquiry should be made to determine why claimant failed to receive decision # L0004770181 and whether the failure was a factor beyond claimant's reasonable control that prevented timely filing, including whether claimant's address on file with the Department was current, and whether claimant had experienced any other problems receiving mail at that time.

Further, if good cause is found to extend the filing deadline, additional inquiry should be made as to whether the late request for hearing was filed within a "reasonable time" of when the factors that prevented timely filing ended. Inquiry should be made as to when and how claimant learned of decision # L0004770181 and the right to file a late request for hearing, including whether an administrative decision assessing an overpayment based on decision # L0004770181 was issued and received by claimant, when claimant contacted the Department regarding either an overpayment decision or the billing statement, and the results of such contacts.

For these reasons, Order No. 24-UI-269658 is set aside, and this matter remanded for a hearing to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # L0004770181.

DECISION: Order No. 24-UI-269658 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: November 7, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-269658 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 desisyong ito.

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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