

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0798

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On July 30, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the week of July 14, 2024 through July 20, 2024 (week 29-24) and therefore was not eligible for unemployment insurance benefits for that week (decision # L0005312731). On August 19, 2024, decision # L0005312731 became final without claimant having filed a request for hearing. On October 13, 2024, claimant filed a late request for hearing on decision # L0005312731.

ALJ Kangas considered claimant's request, and on October 17, 2024 issued Order No. 24-UI-269698, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 31, 2024. On November 1, 2024, claimant filed a late response to the appellant questionnaire. On November 5, 2024, ALJ Kangas issued Order No. 24-UI-272139, canceling Order No. 24-UI-269698, declining to consider claimant's response to the appellant questionnaire because it was late, and re-dismissing claimant's late request for hearing. On November 13, 2024, claimant filed an application for review of Order No. 24-UI-272139 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information with their response to the appellant questionnaire. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence while the matter was pending at the Office of Administrative Hearings (OAH) when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

The parties may offer new information, such as the information contained in claimant's written argument, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish 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.

CONCLUSIONS AND REASONS: Order No. 24-UI-272139 is set aside and this matter remanded for a hearing on whether claimant’s late request for hearing on decision # L0005312731 should be allowed and, if so, the merits of that decision.

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 # L0005312731 was due by August 19, 2024. Because claimant did not file their request for hearing until October 13, 2024, the request was late. On their response to the appellant questionnaire, claimant stated that they were not certain when they received decision # L0005312731, as they “didn’t receive a paper letter & noticed when [they] checked Frances.oregon.gov.” Exhibit 3 at 2. Claimant also stated that they filed a request for hearing on August 29, 2024, and further explained, “I wrote in on 8/29/24 [and] got a [response] on 9/14/24. I filed my request on 10/13/24 because that is when I saw someone had replied. I have been having a lot of health issues & very busy w/ new job. & newly single parent.” Exhibit 3 at 2–3.

Claimant’s explanation above does not show that they had good cause to file the late request for hearing on October 13, 2024. While being busy with health issues, work, and parenting is understandable, these concerns do not explain why claimant was unable to check their Frances Online account for more than six weeks after they sent their initial message on August 29, 2024 to see if they had received a response.

However, it appears that claimant did not receive a copy of decision # L0005312731 in the mail, did not notice that they had been denied benefits until they logged into their Frances Online account, and subsequently filed a late request for hearing on August 29, 2024. If claimant did not become aware of decision # L0005312731 until after the timely filing deadline had passed, claimant may have been prevented from filing a timely request for hearing due to factors beyond their reasonable control, and therefore might have had good cause for filing the August 29, 2024 late request for hearing.

On remand, the ALJ should inquire as to when claimant first logged into Frances Online and learned of decision # L0005312731 and, if this was on a date prior to August 29, 2024, why they did not file the request the same day that they learned about decision # L0005312731. The ALJ should also inquire as to whether claimant failed to receive decision # L0005312731 in the mail because claimant had moved and failed to update their address with the Department and, if so, whether claimant was claiming benefits at that time or had any other appeals pending.

For the above reasons, Order No. 24-UI-272139 is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing should be allowed and, if so, the merits of decision # L0005312731.

DECISION: Order No. 24-UI-272139 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: December 11, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-272139 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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