

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0805

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On September 10, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective July 28, 2024 (decision # L0006130858).¹ On September 30, 2024, decision # L0006130858 became final without claimant having filed a request for hearing. On October 1, 2024, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on October 25, 2024 issued Order No. 24-UI-270753, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 8, 2024. On November 14, 2024, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 24-UI-270753 with the Employment Appeals Board (EAB). This matter comes before EAB based upon claimant's November 14, 2024 application for review of Order No. 24-UI-270753.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is a statement claimant included with their application for review with information about why claimant's request for hearing was late. The statement, substantially equivalent to a response to the appellant questionnaire, has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, saying why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit will remain in the record.

CONCLUSIONS AND REASONS: Order No. 24-UI-270753 is set aside and this matter remanded for a hearing on whether to allow claimant's late request for hearing on decision # L0006140858 and, if so, the merits of that decision.

¹ Decision # L0006130858 stated that claimant was denied benefits from August 11, 2024 to August 9, 2025. However, because the decision stated that claimant's work separation occurred on July 31, 2024, decision # L0006130858 should have stated that claimant was disqualified from receiving benefits beginning Sunday, July 28, 2024 and until they earned four times their weekly benefit amount. See ORS 657.176.

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 # L0006130858 was due by September 30, 2024. Because claimant did not file a request for hearing until October 1, 2024, claimant's request for hearing was late.

In claimant's statement, they explained that they did not consider appealing decision # L0006130858 at first because the idea of participating in a hearing about their work separation caused them anxiety. EAB Exhibit 1 at 1. Claimant further explained that on September 30, 2024, the day decision # L0006130858 became final, they spoke "with someone familiar with the UI program" who "helped [claimant] realize" that "the way [claimant] described" their work separation to the Department may have been the factor that "disqualified [claimant] from benefits[.]" EAB Exhibit 1 at 1. The conversation claimant had with the person familiar with the unemployment insurance program "allowed [claimant] to see through the anxiety surrounding the idea of a hearing[.]" EAB Exhibit 1 at 1. Claimant stated that their "appeal deadline happened to be September 30" and they were not "able to complete it before the end of the day." EAB Exhibit 1 at 1.

Further development of the record is necessary to determine whether claimant had good cause for the late request for hearing and, if so, whether claimant filed within a reasonable time of when the factors preventing a timely filing ceased to exist.

On remand, the ALJ should inquire about the nature and extent of claimant's anxiety, whether it was a diagnosed condition, whether claimant received treatment for it, and how precisely it prevented them from filing a request for hearing from the date claimant received decision # L0006130858 through September 30, 2024. The ALJ should ask questions to develop the record regarding the person claimant spoke with who was familiar with the unemployment insurance program, including who that person was, whether they were a representative of the Department, how they became familiar with the unemployment insurance program, and what precisely they told claimant that addressed claimant's anxiety. The ALJ should then ask questions to develop why claimant could not complete filing a request for hearing before the end of the day on September 30, 2024. The ALJ should inquire when precisely on September 30, 2024 claimant received the information that relieved them of their anxiety. The ALJ should ask questions to confirm that Frances Online was the method by which claimant requested a hearing on October 1, 2024. The ALJ should ask questions to verify that Frances Online is available all hours of the day to be used as a method for filing a request for hearing, and if so, should inquire what, if anything, prevented claimant from using Frances Online (or any other filing method) to file a request for hearing on September 30, 2024, the final day to do so timely, given that claimant gained the information that addressed their anxiety on that day.

Claimant's October 1, 2024 filing date would appear to have necessarily been made within a seven-day reasonable time. However, the ALJ should make any necessary inquiry to confirm that claimant's late request for hearing was made within a seven-day reasonable time of when any circumstances preventing a timely filing ended. If a factor beyond claimant's reasonable control or an excusable mistake

constituted good cause for the late appeal, and if claimant's late request for hearing was made within a seven-day reasonable time, the late request for hearing should be allowed and the ALJ should turn to the merits of the case.

Order No. 24-UI-270753 therefore is set aside, and this matter remanded for a hearing on whether to allow claimant's late request for hearing and, if so, the merits of decision # L0006130858.

DECISION: Order No. 24-UI-270753 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-270753 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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