

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0827

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On June 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 April 14, 2024, and was overpaid \$545 in benefits that she must repay (decision # L0004507628). On July 1, 2024, decision # L0004507628 became final without claimant having filed a request for hearing. On July 26, 2024, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on July 31, 2024, issued Order No. 24-UI-260896, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 14, 2024. On August 6, 2024, claimant filed a timely response to the appellant questionnaire.

On October 10, 2024, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 24-UI-260896 was vacated and that a hearing would be on whether to allow claimant's late request for hearing and, if so, the merits of decision # L0004507628. On November 12, 2024, ALJ Frank conducted a hearing, and on November 20, 2024, issued Order No. 24-UI-274006, re-dismissing claimant's late request for hearing as late without good cause, leaving decision # L0004507628 undisturbed. On December 4, 2024, claimant filed a timely application for review of Order No. 24-UI-274006 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On June 10, 2024, the Department mailed decision # L0004507628 to claimant's address on file with the Department. Decision # L0004507628 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 1, 2024.**" Exhibit 1 at 7 (emphasis in original).

(2) On June 10, 2024, claimant received a copy of decision # L0004507628 via Frances Online.

(3) On July 1, 2024, decision # L0004507628 became final without claimant having filed a request for hearing.

(4) On July 26, 2024, claimant visited a WorkSource Oregon office. Claimant filed a late request for hearing on decision # L0004507628 that same day.

CONCLUSIONS AND REASONS: Claimant's late request for hearing is dismissed.

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 # L0004507628 was due by July 1, 2024. Because claimant did not file her request for hearing until July 26, 2024, the request was late.

At hearing and in her response to the appellant questionnaire, claimant expressed her belief that she had filed a timely request for hearing on decision # L0004507628 on June 10, 2024, the same day that she received the decision. Audio Record at 17:15; Exhibit 2 at 1. Claimant also stated in her response to the appellant questionnaire that she had "emails on Frances Online System where [she] request[ed] updates on [her] claim and appeal." Exhibit 2 at 1. However, claimant did not produce copies of any such emails which might tend to show that she either filed, or attempted to file, a timely request for hearing. Neither did claimant read into the hearing record the contents of those emails, describe in detail the steps she took to file a timely request, or offer any other corroborating evidence to support her claim that she filed a timely request for hearing. Likewise, the Department's witness testified that they had no record of any contacts from claimant during the timely appeal period. Audio Record at 12:05. Despite claimant's assertion that she filed a timely request for hearing, she has not met her burden of proof to show that she took any actions during the timely appeal period that could be construed as a request for hearing on decision # L0004507628.

Claimant has also not shown that she had good cause for filing the late request for hearing. Claimant received decision # L0004507628 on the same day that it was issued, and presented no evidence to show that she was unable to file a timely request for hearing after receiving it. The only explanation in the record for claimant's failure to file a timely request for hearing was her erroneous belief that she had already done so. Claimant therefore was not prevented from filing a timely request for hearing due to factors beyond her reasonable control.

Similarly, although claimant's belief that she had already filed a timely request for hearing was likely the result of a mistake on her part, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Because claimant's failure to file a timely request for hearing was not the result of factors beyond her reasonable control or an excusable mistake, claimant did not have good cause for filing the late request for hearing on decision # L0004507628. Claimant's late request for hearing on decision # L0004507628 therefore is dismissed under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 24-UI-274006 is affirmed.

D. Hettle and A. Steger-Bentz;
S. Serres, not participating.

DATE of Service: December 30, 2024

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals **within 30 days of the date of service stated above**. See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under "File a Petition for Judicial Review." You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

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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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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