

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1128

Affirmed
Late Requests for Hearing Dismissed

FINDINGS OF FACT AND PROCEDURAL HISTORY: On October 24, 2018, the Oregon Employment Department (the Department) served notices of two administrative decisions, one concluding that claimant quit working for NK Remodeling And Construction, LLC (NK Remodeling) without good cause (decision # 144634), and the other concluding that claimant was not able, available and actively seeking work from August 26 through September 29 and October 7 through 20, 2018 (decision # 140809). On November 13, 2018, decision # 144634 and decision # 140809 became final without claimant having filed a request for hearing on either decision. On November 14, 2018, claimant filed late requests for hearing on both decisions. On November 20, 2018, ALJ Kangas issued Order No. 18-UI-119998 dismissing claimant's late request for hearing on decision # 144634 and Order No. 18-UI-119999 dismissing claimant's late request for hearing on decision # 140809, subject to claimant's right to renew the requests by responding to appellant questionnaires by December 4, 2018. On December 6, 2018, claimant filed late responses to the appellant questionnaires and timely applications for review of Order No. 18-UI-119998 and Order No. 18-UI-119999 with the Employment Appeals Board (EAB). On December 10, 2018, ALJ Kangas served notice that because claimant's responses to the appellant questionnaires were late, they would not be considered, and Order No. 18-UI-119998 and Order No. 18-UI-119999 therefore remained in effect.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order No. 18-UI-119998 and Order No. 18-UI-119999. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-1127 and 2018-EAB-1128).

Claimant submitted his responses to the appellant questionnaires with his applications for review. EAB marked and received claimant's responses to the appellant questionnaires into evidence as EAB Exhibit 1 and considered them when reaching this decision under OAR 471-041-0090(1) (October 29, 2016), under which exhibits offered but not received into the hearing record may be received into evidence as necessary to complete the record.

CONCLUSIONS AND REASONS: Claimant's late requests for hearing on Order No. 18-UI-119998 and Order No. 18-UI-119999 are 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 it 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 first issue in this case is whether claimant filed a timely request for hearing on decision # 144634 or decision # 140809. Department records indicate that claimant filed his requests for hearing on both decisions on November 14, 2018, one day after the November 13, 2018 filing deadline. Exhibit 2. The appellant questionnaires asked claimant, "If you did not file your hearing request (appeal) before the deadline stated in the administrative decision, why didn't you?" EAB Exhibit 1. In his responses, claimant answered, "I did," but then seemed to explain why he did not file his hearing request before the deadline. *Id.* The appellant questionnaires also asked, "Was there anything you could have done to meet the deadline?" *Id.* In one response, claimant answered, "No, I tried to call Unemployment and they said I was okay and they would extend my timeline." *Id.* In the other response, claimant answered, "I didn't dis [sic] meet the time line." *Id.* Claimant's answers fail to establish that, contrary to the Department's records, he filed a timely request for hearing on decision # 144634 or decision # 140809 before November 14, 2018.

The next issue is whether claimant showed good cause to extend the deadline for filing his requests for hearing on decision # 144634 and decision # 140809. In his responses to the appellant questionnaires, claimant seemed to state that he delayed filing his request for hearing because he had a lawsuit pending against NK Remodeling for sexual assault and was advised by his attorney, who coached him "through everything," not to disclose "that information." *Id.* However, claimant also stated that it was his sexual assault case/lawsuit against NK Remodeling that prompted him to file his request for hearing on the day it was filed. *Id.* Claimant's statements fail to identify any specific factors beyond his reasonable control that prevented him from filing his requests for hearing by the November 13, 2018 deadline, but which ceased to exist one day later, allowing him to file his requests on November 14, 2018. It is more likely that claimant simply made a mistake in filing his requests for hearing one day late. However, claimant failed to establish that it was an "excusable mistake" within the meaning of the administrative rules because he did not, for example, raise a due process issue, or show that his mistake was the result of legally defective notice or the inability to follow directions despite substantial efforts to comply.

Claimant therefore failed to establish good cause to extend the deadline for filing his requests for hearing on decision # 144634 and decision # 140809. His late requests for hearing therefore are dismissed.

DECISION: Order No. 18-UI-119998 and Order No. 18-UI-119999 are affirmed.

D. P. Hettle and S. Alba;
J. S. Cromwell, not participating.

DATE of Service: December 14, 2018

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 listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem,

Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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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 Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición 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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