

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0009

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On September 26, 2018, the Oregon Employment Department (the Department) served notice, by mail, of an administrative decision concluding that claimant willfully underreported earnings to obtain benefits, and therefore was overpaid \$534 in benefits that she must repay the Department, is disqualified from 4 weeks of future benefits, and assessed a \$133.50 monetary penalty (decision # 194143). On December 6, 2018, claimant filed a request for hearing. On December 10, 2018, ALJ Kangas issued Order No. 18-UI-120977, dismissing claimant's request for hearing as late without a showing of good cause, subject to her right to renew her request by responding to an appellate questionnaire by December 24, 2018. On December 26, 2018, claimant filed a late response to the appellant questionnaire and a timely application for review by the Employment Appeals Board (EAB).

EAB considered the entire hearing record. EAB marked claimant's response to the appellant questionnaire as EAB Exhibit 1 and received it into evidence under OAR 471-041-0090(1) (October 29, 2006), under which exhibits offered but not received into the hearing record may be received into evidence as necessary to complete the record. EAB considered EAB Exhibit 1 when reaching this decision. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, EAB Exhibit 1 will remain in the record.

FINDINGS OF FACT: Decision # 194143 stated that to be timely, any appeal from the decision had to be filed on or before October 16, 2018. Exhibit 1. Claimant did not file a request for hearing until December 6, 2018.

CONCLUSIONS AND REASONS: Claimant failed to establish that she filed a timely request for hearing on decision # 194143. Claimant's late request for hearing on that decision 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 it is mailed. A request for hearing may be filed on forms provided by the Department or similar offices in other states. OAR 471-040-0005(1) (July 15, 2018). Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal. *Id.* ORS 657.875 provides that the 20-day filing 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 or circumstances beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors or factors ceased to exist.

The first issue in this case is whether claimant filed a timely request for hearing on decision # 194143. Notice of decision # 194143 was mailed to claimant on September 26, 2018, and claimant's request for hearing therefore was due by October 16, 2018. In her December 6, 2018 request for hearing, claimant asserted that she had filed a request for hearing by fax on September 24, 2018. Exhibit 2. In her response to the appellant questionnaire, claimant stated that she thought she had, by phone, taken care of the confusion regarding the benefits she received, and filed a request for hearing on December 6, 2018 after receiving new mailings from the Department regarding the repayment of those benefits. EAB Exhibit 1. However, no document filed by claimant on September 24th can be construed as a request for hearing on decision # 194143, given that notice of that decision was not mailed to claimant until September 26th. Nor is claimant's assertion that she thought she had resolved the matter by phone sufficient to establish that she specifically requested a hearing on decision # 194143 or otherwise expressed a present intent to appeal that decision before December 6, 2018. Claimant therefore failed to establish that she filed a timely request for hearing on decision # 194143.

The next issue is whether established good cause to extend the deadline for filing a request for hearing on decision # 194143 to December 6, 2018. As noted above, claimant stated in her response to the appellant questionnaire that she thought she had resolved the matter by phone, and filed a request for hearing on December 6, 2018 after receiving new mailings from the Department. EAB Exhibit 1. When asked if there was anything she could have done to meet the October 16, 2018 deadline for filing a request for hearing, claimant responded, "No, I think it was a miscommunication." EAB Exhibit 1. However, claimant's responses to the appellant questionnaire show that her failure to file a timely request for hearing was not due to factors or circumstances beyond her reasonable control, but her own mistake in thinking that she already had resolved the matter. And although claimant's failure to file a timely request for hearing was a mistake, she failed to show that it was an "excusable" mistake that, for example, raises a due process issue, or was the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Nor did claimant show that she filed her request for hearing within seven days after receiving the new mailings from the Department. Absent such showings, claimant failed to establish good cause to extend the deadline for filing a request for hearing to December 6, 2018.

Claimant's late request for hearing on decision # 194143 therefore is dismissed.

DECISION: Order No. 18-UI-120977 is affirmed.

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

DATE of Service: January 9, 2019

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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