

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0060

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY AND FINDINGS OF FACT: On October 18, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 84406). On November 7, 2018, decision # 84406 became final without claimant having filed a request for hearing. On November 29, 2018, claimant filed a late request for hearing. On December 4, 2018, ALJ Kangas issued Order No. 18-UI-120710, dismissing claimant's request for hearing as untimely without a showing of good cause, subject to her right to renew her request by responding to an appellant questionnaire by December 18, 2018. Claimant filed a timely response to the appellant questionnaire. ALJ Kangas reviewed claimant's response, and on December 26, 2018 issued Order No. 18-UI-121763, re-dismissing claimant's request for hearing as untimely without good cause. On January 15, 2019, claimant filed a timely application for review of Order No. 18-UI-121763 with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 84406 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 14, 2011). Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed. *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 circumstances ceased to exist.

In her November 29, 2018 late request for hearing on decision # 84406, claimant asserted that she already had faxed a "request" to the Office of Administrative Hearings (OAH) on November 14, 2018, two days after she received the "denial decision." Exhibit 2. According to claimant, "someone"

telephoned her on November 29th and stated that her “appeal had ended up at the TUI [Training Unemployment Insurance] dept instead of the correct dept. and [she] needed to request a late appeal on a quit decision from [her] school district [the employer].” *Id.* Department records do show that on November 2, 2018, claimant told a Department representative that she had not received decision # 84406, and that the Department representative advised claimant to check her mail and request a hearing if she disagreed with the decision. However, Department records also show that on November 28, 2018, claimant told a Department representative that she did receive decision # 84406, but did not file a timely request for hearing because she was not sure how to correctly do so. Department records do not show any contact with claimant on November 29th.¹

Claimant’s response to the appellant questionnaire provided no additional information regarding her late request for hearing, such as a fax confirmation showing that she faxed a document to OAH on November 14th, a copy of the document she allegedly faxed, or the name or department of the person who allegedly telephoned her on November 29th. Absent such information, claimant failed to show that she filed a request for hearing on decision # 84406 before November 29th. Thus, even if claimant did not receive decision # 84406 until November 12th, she did not file her late request for hearing within seven days after the factors or circumstances that allegedly prevented a timely filing ceased to exist. Claimant therefore did not file her late request for hearing within a reasonable time.

In her application for review, claimant submitted new information regarding her late request for hearing, asserting that decision # 84406 was “never conveyed to [her]” until her conversation with the Department representative on November 28, 2018. However, new information may be considered only when the party offering the information establishes that factors or circumstances beyond the party’s reasonable control prevented the party from offering the information into the hearing record. OAR 471-041-0090 (October 29, 2006). Here, claimant failed to establish that it was beyond her reasonable control to offer her new information into the hearing record when responding to the appellant questionnaire attached to Order No. Order No. 18-UI-120710. EAB therefore did not consider claimant’s new information when reaching this decision. And even if we did, the outcome of this decision would remain the same, given that claimant’s new information is contradicted not only by Department records, but by claimant’s November 29, 2018 request for hearing.

Claimant’s late request for hearing on decision # 84406 therefore is denied.

DECISION: Order No. 18-UI-121763 is affirmed.

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

DATE of Service: February 1, 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

¹ We take notice of these facts, which are contained in Employment Department records. 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, the noticed facts will remain in the record.

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 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 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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

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