

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0078

Reversed
Late Request for Hearing Allowed

PROCEDURAL HISTORY: On May 9, 2018, the Oregon Employment Department served notice of an administrative decision concluding that Little Caesars Pizza discharged claimant for misconduct (decision # 63946). On May 15, 2018, claimant filed a timely request for hearing. On May 23, 2018, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for June 6, 2018. On June 6, 2018, claimant failed to appear at the hearing, and ALJ Seideman issued Order No. 18-UI-110788, dismissing claimant's request for hearing due to his failure to appear. On June 26, 2018, Order No. 18-UI-110788 became final without claimant having filed a request to reopen the June 6th hearing or an application for review of Order No. Order No. 18-UI-110788 with the Employment Appeals Board (EAB).

On August 13, 2018, the Department served, by mail, notice of an administrative decision, based on decision # 63946, concluding that claimant willfully failed to report his discharge by Little Caesars Pizza to obtain benefits, and therefore must repay \$564 in benefits, and is disqualified from 4 weeks of future benefits and assessed a \$84.60 monetary penalty (decision # 195535). On September 4, 2018, decision # 195535 became final without claimant having filed a request for hearing. On November 5, 2018, claimant filed a late request for hearing. On November 13, 2018, ALJ Kangas issued Order No. 18-UI-119588, dismissing claimant's request for hearing subject to his right to renew his request by responding to an appellant questionnaire by November 27, 2018. On November 26, 2018, claimant responded to the appellant questionnaire. On December 4, 2018, the Office of Administrative Hearings (OAH) cancelled Order No. 18-UI-119588, and on December 11, 2018 served notice of a hearing scheduled for December 27, 2018.

On December 19, 2018, the Department served notice of administrative decision # 195261, amending decision # 195535 by correcting the employer's name and mailing address, and OAH re-served notice of the hearing scheduled for December 27, 2018. On December 27, 2018, ALJ Snyder conducted a hearing, and on January 4, 2019 issued Order No. 19-UI-122163, re-dismissing claimant's late request for hearing as untimely without good cause. On January 22, 2018, claimant filed an application for review of Order No. 19-UI-122163 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) When the Department mailed decision # 63946 to claimant on August 13, 2018, he had been chronically homeless since January 2018 and had been using his grandmother's address as his address of record with the Department. He had not claimed benefits since May 21, 2018,¹ had last checked his mail at his grandmother's house in mid-July 2018, and was not expecting any mail from the Department. Claimant also had no access to a telephone, which prevented him from contacting his grandmother, and was dealing with mental health issues. His mental health issues prevented him from picking up his mail at his grandmother's house unannounced due to issues with his father, who lived with claimant's grandmother.

(2) In early November 2018, claimant regained access to a telephone and arranged to pick up his mail at his grandmother's house. Claimant first became aware of decision # 63946 when he picked up his mail in early November 2018. On November 5, 2018, claimant telephoned the department and requested a hearing.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 63946 is allowed.

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 or circumstances beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors ceased to exist.

In Order No. 19-UI-122163, the ALJ concluded that claimant did not establish that it was beyond his reasonable control to pick up his mail at his grandmother's house in time to file a timely request for hearing on decision # 63946.² In support of that conclusion, the ALJ asserted that although claimant testified that he was chronically homeless in 2018, he did not present evidence that he was prevented from checking his mail at his grandmother's house.³

At hearing, however, claimant repeatedly testified that in addition to being homeless, he had no access to a telephone, which prevented him from contacting his grandmother, and was dealing with mental health issues. Audio Record at 22:00-30:10. Claimant further testified that his mental health issues prevented him from picking up his mail at his grandmother's house unannounced due to issues with his father, who lived with claimant's grandmother. Audio Record at 28:30-29:05. Absent evidence to the contrary, claimant's testimony was sufficient to show that it was beyond his reasonable control to pick up his mail at his grandmother's house in time to file a timely request for hearing on decision # 63946. Claimant therefore established good cause for failing to file a timely request for hearing.

¹ We take notice of this fact, which is 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 fact will remain in the record.

² Order No. 19-UI-122163 at 3.

³ *Id.*

The remaining issue is whether claimant filed his late request for hearing on decision # 63946 within a reasonable time. Claimant first became aware of decision # 63946 when he picked up his mail in early November 2018. He filed his request for hearing on November 5, 2018, which was within seven days after the factors and circumstances that prevented at timely cease to exist. Claimant therefore filed his late request for hearing within a reasonable time.

Claimant's late request for hearing on decision # 63946 therefore is allowed. Claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 19-UI-122163 is set aside, as outlined above.

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

DATE of Service: February 14, 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 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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