

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0104

Affirmed - Afirmada
Late Request for Hearing Dismissed - Petición Tardía para Audiencia es Negada

PROCEDURAL HISTORY: On March 6, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from February 4, 2018 through February 17, 2018 (decision # 153117). On March 26, 2018, decision # 153117 became final without claimant having filed a request for hearing. On November 16, 2018, claimant filed a late request for hearing. On November 27, 2018, ALJ Kangas issued Order No. 18-UI-120281, dismissing claimant's request for hearing as untimely without a showing of good cause subject to her right to renew the request by responding to an appellant questionnaire by December 11, 2018. On December 10, 2018, claimant filed a timely response to the appellant questionnaire. On December 13, 2018, the Office of Administrative Hearings (OAH) cancelled Order No. 18-UI-120281, and on December 26, 2018 scheduled a hearing for January 8, 2019. On January 8, 2019, ALJ Janzen conducted a hearing, and on January 9, 2019 issued Order No. 19-UI-122346 re-dismissing claimant's late request for hearing on decision # 153117 as untimely without good cause. On January 28, 2019, claimant filed an application for review of Order No. 19-UI-122346 with the Employment Appeals Board (EAB).

PRELIMINARY MATTER: The Spanish interpreter present at the January 8, 2019 hearing had difficulty with some of the terminology used during the hearing. However, his interpretation did not prevent the ALJ, with the Department representative's assistance, from inquiring fully into the matters at issue and giving claimant a reasonable opportunity for a fair hearing as required by ORS 657.270(3) and OAR 471-040-0025(1) (August 1, 2004).

FINDINGS OF FACT: (1) The Department mailed decision # 153117 to claimant's address of record on March 6, 2018. Decision # 153117 stated that to be timely, any appeal from the decision had to be filed on or before March 26, 2018. Exhibit 1. Claimant did not file a request for hearing until November 16, 2018.

(2) At the time the Department mailed decision # 153117 to claimant, she was receiving her mail but she was not paying attention to it. Claimant was preoccupied because she had recently had foot surgery, her mother was ill, and she was having issues at work.

(3) Claimant become aware of decision # 153117 in approximately May or June 2018.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant did not show good cause for filing a late request for hearing on decision # 153117. Claimant's late request for hearing therefore 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. 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.

At hearing, claimant did not dispute that decision # 153117 was mailed to her on March 6, 2018, and that she in fact received it. However, claimant chose not to read her correspondence until sometime in May or June 2018 because at the time she was "not focus on the incoming mail" and she "[j]ust toss it anywhere." Transcript at 14-16. Claimant's request for hearing on decision # 153117 was filed seven and a half months late, and reading her mail in a timely manner was a factor within claimant's reasonable control. And although claimant's failure to read her mail in a timely manner was a mistake, it was not an excusable mistake because it does 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. Therefore, claimant has failed to establish good cause to extend the filing deadline.

Even if claimant had established good cause for failing to file a timely request for hearing the outcome of this decision would remain the same. Claimant filed her request for hearing five to six and a half months after she first became aware of decision # 153117, and therefore more than seven days after the circumstances that prevented a timely filing ceased to exist. Claimant therefore did not file her late request for hearing within a reasonable time as defined under OAR 471-040-0010.

Claimant's late request for hearing on decision # 153117 therefore is dismissed.

DECISION: Order No. 19-UI-122346 is affirmed. *La Orden de la Audiencia 19-UI-122346 queda confirmada.*

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

DATE of Service: March 7, 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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***NOTA:** Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.*

Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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 – 本判决会影响您的失业救济金。如果您不明白本判决，请立即联系就业上诉委员会。如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

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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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