

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0140

Application for Review Dismissed

PROCEDURAL HISTORY: On October 24, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 84335). Claimant filed a timely request for hearing. On December 27, 2018, ALJ Shoemake conducted a hearing, which both parties attended, and on January 4, 2019 issued Order No. 19-UI-122068, concluding that claimant's discharge was not for misconduct. On January 24, 2019, Order No. 19-UI-122068 became final without the employer having filed a timely application for review with the Employment Appeals Board (EAB). On February 1, 2019, the employer filed a late application for review with EAB.¹

FINDINGS OF FACT: (1) The employer attended the December 27th hearing. At the time of the hearing, the employer's representative was new to the employer's business and had not had time to sufficiently prepare for the hearing. Had the representative had more time she could have presented evidence to support the employer's position that claimant had engaged in disqualifying misconduct that caused his discharge.

(2) The employer more likely than not received notice of Order No. 19-UI-122068, which concluded that claimant's discharge was not for misconduct and that claimant therefore was not disqualified from receiving benefits. The employer did not file an application for review of Order No. 19-UI-122068 by January 24, 2019.

CONCLUSIONS AND REASONS: The employer did not establish good cause to file an untimely application for review, and the application for review should therefore be dismissed.

¹ The employer filed a request for hearing on the Department's January 17, 2019 decision denying the employer's request for relief of charges. Because that request for hearing discussed the employer's participation on the December 27th hearing, referred to "the decision made in favor of" claimant (which has to refer to a decision to which claimant was a party and therefore cannot be solely in reference to the administrative charge relief decision), and disputed the award of benefits to claimant (which again cannot be solely in reference to the administrative charge relief decision since an employer being relieved of charges does not require that a claimant be denied benefits), the employer's request for hearing has also been construed under OAR 471-041-0060(1) as an application for review of Order No. 19-UI-122068.

ORS 657.270(6) required the employer's application for review to be filed no later than January 24, 2019; it was filed on February 1, 2019. OAR 471-041-0070 (October 29, 2006) provides:

- (1) An application for review is timely if it is filed within 20 days of the date that OAH mailed the hearing decision sought to be reviewed. EAB shall dismiss a late application for review, unless the filing period is extended in accordance with this rule.
- (2) The filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875.
 - (a) "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing.
 - (b) "A reasonable time" is seven days after the circumstances that prevented timely filing ceased to exist.

The employer's application for review did not expressly identify the reason the employer waited until a week after the deadline before filing an application for review in this case. In the context of the employer's letter of appeal, we infer that the timing of the employer's filing probably resulted from the time it took for the employer's representative to locate documentation substantiating the employer's allegation that claimant was discharged for disqualifying misconduct. Such delays do not amount to good cause to extend the filing deadline: the documentation was likely within the employer's custody at all relevant times; the absence of such documentation does not toll the filing deadline; and there is nothing suggesting that it was not within the employer's reasonable control to file the application for review itself in a timely manner and then subsequently provide any supporting documentation within the period allowed for parties to provide written argument to EAB. Good cause to extend the filing deadline has not been shown, and the employer's application for review must therefore be dismissed.

DECISION: The application for review filed February 1, 2019 is dismissed. Order No. 19-UI-122068 remains undisturbed.

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

DATE of Service: February 28, 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

ទោរទៅ – តម្រូវការនេះមិនមែនជាភារកិច្ចរបស់រដ្ឋទេ បើសិនជាលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

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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