

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0274

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 15, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 144255). On December 5, 2018, decision # 144255 became final without claimant having filed a timely request for hearing. On January 17, 2019, claimant filed a late request for hearing. On January 22, 2019, ALJ Kangas issued Order No. 19-UI-123157 dismissing claimant's late request for hearing subject to claimant's rights to renew the request by responding to an appellant questionnaire by February 5, 2019. On January 31, 2019, claimant responded to the appellant questionnaire and the Office of Administrative Hearings (OAH) issued a letter stating that Order No. 19-UI-123157 was cancelled. On February 12, 2019, OAH mailed notice of a hearing scheduled for February 26, 2019. On February 26, 2019, ALJ Murdock conducted a hearing and on March 1, 2019, issued Order No. 19-UI-125634, re-dismissing claimant's late request for hearing. On March 12, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision to the extent it was based upon the hearing record. Claimant stated that it was not fair that her former employer was on the phone during the hearing about her late request for hearing, and that their presence at that part of the hearing impaired her ability to represent herself. It is unfortunate that claimant felt that way during the hearing. However, the employer is a party to these proceedings and had a legal right to be present at the hearing, and the Department and OAH had a legal obligation to include the employer in the hearing.

FINDINGS OF FACT: (1) Although the Department mailed notice of decision # 144255 to claimant at her address of record, claimant did not receive it. She also did not receive a letter the Department mailed her about a week later stating that her weekly claim was not payable. Claimant received other mail from the Department and retained it, but even after learning that decision # 144255 had been issued she could not locate the decision in the stack of other mail she had received from the Department. Since July 2017, claimant had experienced ongoing problems with the post office delivering mail to herself and tenants at the large apartment complex she helped manage. Claimant was in contact with the postmaster about the mail problems and was repeatedly assured that the post office was working to correct the problems.

(2) In late November 2018, claimant underwent surgery. After surgery, she had good days when she could function and handle some aspects of her personal business. She also had bad days when she had difficulty functioning and was unable to handle her personal business. She also experienced a severe case of strep throat for two weeks around that time.

(3) During the first part of December 2018, claimant learned that the Department had issued a decision that denied her benefits. Claimant did not ask and was not told how to appeal or dispute decision # 144255.

(4) Claimant regularly visited an employment specialist at a WorkSource Oregon center, approximately once per week between the second week of December and early January 2019. During the first week of January 2019, claimant told her employment specialist about decision # 144255 and that she had not called about requesting a hearing on that decision.

(5) Claimant filed a weekly claim for benefits for the week of January 6 to January 12, 2019 (week 2-19). In order to file a claim for that week she had to certify to the Department that she was physically and mentally capable of performing full time, part time, and temporary work during the entirety of that week.

(6) On January 17, 2019, claimant filed a late request for hearing on decision # 144255.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 144255 must be dismissed.

ORS 657.269 provides that parties have 20 days to request a hearing after the Department has issued an administrative decision. 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 defines "good cause" as an excusable mistake or factors beyond an applicant's reasonable control, and "a reasonable time" as seven days after the circumstances that prevented a timely filing ceased to exist.

The ALJ concluded that claimant's late request for hearing should be dismissed, implicitly finding that claimant did not establish good cause to extend the filing period, and implicitly rejecting claimant's assertion of non-receipt under the presumption of mail receipt set forth in ORS 40.135(1)(q). Order No. 19-UI-125634 at 3. However, the mail receipt presumption may be rebutted by evidence, including circumstantial evidence, of non-receipt. Claimant retained all the mail she received from the Department, but did not have a copy of decision # 144255, suggesting that she did not receive it. Claimant provided unrefuted evidence that tenants at her apartment complex regularly had issues receiving mail and that she was working with the postmaster to resolve the issue, which further suggests the likelihood that claimant did not always receive mail directed to her. Claimant's circumstantial evidence of non-receipt is sufficient to rebut the mail receipt presumption. Therefore, it is more likely than not that claimant did not receive decision # 144255 even though the Department mailed it to her.

Claimant's non-receipt of decision # 144255 was a factor beyond her control that prevented her from filing a timely request for hearing. That factor ceased to affect claimant by the first part of December when she gained actual knowledge that the Department had denied her benefits. At that point in time, however, claimant was prevented by another circumstance from filing a timely request for hearing

because she had recently had surgery and strep throat, which resulted in her regularly begin unable to function or handle her personal business. Claimant's failure to receive decision # 144255 and health issues likely amounted to circumstances beyond claimant's reasonable control that prevented a timely filing, and therefore amounted to good cause to extend the filing period "a reasonable time."

According to the applicable law and rules, the filing period may only be extended "a reasonable time," which is defined as seven days after the circumstances that prevented a timely filing ceased to exist. In this case, it is difficult to pinpoint exactly when claimant's health circumstances ceased preventing her from filing a request for hearing on decision # 144255. Beginning the second week of December, she was capable of going to a WorkSource Oregon office and speaking with her employment specialist on a near-weekly basis. At other times, however, she was totally incapacitated. The record does not specify exactly when claimant recovered her health and resumed conducting her personal business without issue.

Assuming for the sake of argument that claimant was incapable of filing a request for hearing in December 2018 or the first week of January 2019 because of surgeries and strep throat, the record shows that claimant filed a weekly claim for unemployment insurance benefits for the week of January 6th through January 12th. In order to claim benefits, claimant had to affirmatively state that she was physically and mentally capable of accepting and reporting to full time, part time, and temporary work opportunities. We infer from claimant's affirmative statement that she was physically and mentally capable of full time work as of January 6th that she necessarily also had to have been recovered enough from her health issues by that date to have contacted the Department about pursuing her unemployment insurance appeal in this case. The seven-day "reasonable time" period in which claimant could file a late request for hearing in this case therefore may only be extended seven days after January 6th, to January 13th. Claimant filed her late request for hearing on January 17th, which was not within that seven-day "reasonable time" period. Claimant's late request for hearing must therefore be dismissed.

DECISION: Order No. 19-UI-125634 is affirmed.

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

DATE of Service: March 29, 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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