

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0301

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On December 9, 2016, the Oregon Employment Department (the Department) served notice, by mail, of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 133418). On December 29, 2016, decision # 133418 became final without claimant having filed a request for hearing. On January 2, 2019, claimant filed a late request for hearing. On January 8, 2019, ALJ Kangas issued Order No. 19-UI-122280, dismissing claimant's request for hearing as untimely without a showing of good cause, subject to claimant's right to renew his request by responding to an appellant questionnaire by January 22, 2019. On January 18, 2019, claimant filed a timely response to the appellant questionnaire. On February 6, 2019, the Office of Administrative Hearings (OAH) cancelled and vacated Order No. 18-UI-122280, and on February 7, 2019 scheduled a hearing for February 21, 2019 on whether claimant's late request for hearing should be allowed. On February 21, 2019, ALJ Frank conducted a hearing, and on March 1, 2018 issued Order No. 19-UI-125600, re-dismissing claimant's late request for hearing on decision # 133418 as untimely without good cause. On March 20, 2019, claimant filed an application for review of Order No. 18-UI-125600 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Department mailed decision # 133418 to claimant's address of record on December 9, 2016. Decision # 133418 stated that to be timely, any appeal from the decision had to be filed on or before December 29, 2016. Exhibit 1. Claimant did not file a request for hearing until January 2, 2019.

(2) On June 15, 2017, the Department mailed claimant a separate decision, assessing an overpayment, monetary penalties, and penalty weeks due to the findings of decision # 133418. In August 2017, the Department began sending claimant monthly billing statements for repayment of the liability assessed in the June 15, 2017 decision.

(3) Since December 9, 2016, until approximately September 2018, claimant had experienced ongoing problems receiving his mail. Claimant was in contact with postmaster about the mail problems and was

assured that the post office was working to correct the problem. None of the correspondence mailed by the Department to claimant was returned to the Department as undeliverable.

(4) Sometime in 2018, claimant's tax refund was intercepted and applied to the overpayment liability set out in the June 15, 2017 decision. However, claimant did not become aware of the 2018 tax refund interception until late November or early December 2018, because he did not check his bank records to determine the tax refund amount, and any refund would have been automatically deposited into his bank account.

(5) On November 16, 2018, claimant filed another initial claim for benefits. In late November or early December 2018, claimant learned that the benefits on his new claim were withheld because of penalty weeks assessed in the June 15, 2017 decision. At that time claimant had at least constructive notice of decision # 133418.

CONCLUSIONS AND REASONS: Claimant failed to establish that he filed a timely request for hearing on decision # 133418. Claimant's late request for hearing on that decision 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.

The issue in this case is whether claimant established good cause to extend the deadline for filing a request for hearing on decisions # 133418 to January 2, 2019. Claimant asserted that he did not file a request for hearing until January 2, 2019 because he did not receive decision # 133418 and did not become aware of it until late November or early December 2018. Assuming for the sake of argument that claimant did not receive decision # 133418, it is unlikely that he did not receive any of the correspondence mailed to him by the Department. It is more likely that he received some of the correspondence but did not realize what it was or its importance. In addition, it was within claimant's reasonable control to check his bank statement in 2018 when he filed his tax returns, had he done so, he would have discovered that his tax refund had been intercepted and applied to an overpayment. Claimant therefore did not establish good cause to extend the filing deadline.

However, 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 his request for hearing several weeks after late November or early December 2018, when he asserts that he first became aware of decision # 133418, which was more than seven days after the circumstances that prevented a timely filing ceased to exist. Claimant therefore did not file his late request for hearing within a reasonable time as defined under OAR 471-040-0010.

Claimant's late request for hearing on decision # 133418 therefore is dismissed.

DECISION: Order No. 19-UI-125600 is affirmed.

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

DATE of Service: April 17, 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 desisyong ito.

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

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 محكمة 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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