

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0310

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On October 20, 2014, the Oregon Employment Department (the Department) served notice, by mail, of an administrative decision concluding that claimant willfully underreported earnings to obtain benefits, and therefore was overpaid \$1,850 in benefits that he must repay the Department, is disqualified from 15 weeks of future benefits, and was assessed a \$462.50 monetary penalty (decision # 195284). On November 10, 2014, decision # 195284 became final without claimant having filed a request for hearing. On March 5, 2019, claimant filed a late request for hearing. On March 7, 2019, ALJ Kangas issued Order No. 19-UI-125947, 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 March 21, 2019. On March 27, 2019, claimant filed a late response to the appellant questionnaire. On March 27, 2019, ALJ Kangas issued a letter stating that because claimant filed his response to the appellant questionnaire late, the response would not be considered, another order would not be issued, and Order No. 19-UI-125947 remained in effect. Also on March 27, 2019, claimant filed a timely application for review of Order No. 19-UI-125947 with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. EAB marked claimant's response to the appellant questionnaire as EAB Exhibit 1 and received it into evidence under OAR 471-041-0090(1) (October 29, 2006), under which exhibits offered but not received into the hearing record may be received into evidence as necessary to complete the record. EAB considered EAB Exhibit 1 when reaching this decision to the extent it was relevant to EAB's determination of whether claimant showed good cause to extend the filing deadline on decision #195284 to March 5, 2019. 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, EAB Exhibit 1 will remain in the record.

FINDINGS OF FACT: Decision # 195284 stated that to be timely, any appeal from the decision had to be filed on or before November 10, 2014. Exhibit 1. Claimant did not file a request for hearing until after the November 10, 2014 deadline.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 195284 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. A request for hearing may be filed on forms provided by the Department or similar offices in other states. OAR 471-040-0005(1) (July 15, 2018). Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal. *Id.* ORS 657.875 provides that the 20-day filing 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 or factors ceased to exist.

The first issue in this case is whether claimant filed a timely request for hearing on decision # 195284. Notice of decision # 195284 was mailed to claimant on October 20, 2014, and claimant's request for hearing therefore was due by November 10, 2014. Claimant did not file his request for hearing until March 5, 2019, four years and four months after the November 10, 2014 deadline. In his response to the appellant questionnaire, claimant stated that he did not file an appeal of decision # 195284 because in 2014, he called OAH and was told that he, "[] would probably not be successful going through the appeals process." EAB Exhibit 1. However, claimant's phone call to OAH in 2014, presumably after he received the decision, did not establish that he specifically requested a hearing on decision # 194143 or otherwise expressed a present intent to appeal that decision before November 10, 2014. Claimant therefore failed to establish that he filed a timely request for hearing on decision # 195284.

The next issue is whether claimant established good cause to extend the deadline for filing a request for hearing on decision # 195284 to March 5, 2019. As stated above, claimant stated in his response to the appellant questionnaire that he called OAH in 2014, and was told that an appeal of decision # 195284 would probably not be successful and based on that conversation he decided not to file a request for hearing. EAB Exhibit 1. However, claimant did not assert in his response to the appellant questionnaire that during his phone conversation with OAH he was told not to file a request for hearing. When asked if there was anything he could have done to meet the November 10, 2014 deadline for filing a request for hearing, claimant responded, "Yes, I should have filed for the hearing request (appeal), regardless of the feedback I received from the person who took my phone call to the Office of Administrative Hearing." EAB Exhibit 1. Claimant's responses to the appellant questionnaire show that his failure to file a timely request for hearing was not due to factors or circumstances beyond his reasonable control, but his own mistake in deciding not to file a request for hearing based on his conversation with OAH. Although claimant's failure to file a timely request for hearing was due to a mistake on his part, he failed to show that it was an "excusable" mistake because it did 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. Claimant therefore failed to establish good cause to extend the filing deadline beyond November 10, 2014.

Claimant's late request for hearing on decision # 195284 therefore is dismissed.

DECISION: Order No. 19-UI-125947 is affirmed.

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

DATE of Service: April 5, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.