

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0357

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On February 11, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not register for work as required by the Director. On March 4, 2019, that decision became final without claimant having filed a timely request for hearing. On March 13, 2019, claimant filed a late request for hearing. On March 15, 2019, ALJ Kangas issued Order No. 19-UI-126461, dismissing claimant's late request for hearing subject to her right to renew the request by responding to an appellant questionnaire by March 29, 2019. On April 1, 2019, claimant filed a late response to the appellant questionnaire and a timely application for review with the Employment Appeals Board (EAB). On April 10, 2019, ALJ Kangas mailed a letter stating that because claimant's response to the questionnaire was late, it would not be considered. This matter is before EAB based on claimant's timely April 1st application for review.

Claimant submitted a copy of the late appellant questionnaire response with her application for review. EAB may only consider additional information that was not part of the hearing record if the information is relevant and material to EAB's determination, and if factors or circumstances beyond the party's reasonable control prevented them from offering the information into the hearing record. OAR 471-041-0090(2). Information in the questionnaire about why claimant filed a late request for hearing is relevant and material to this matter. The ALJ's refusal to consider the late information is at least arguably beyond claimant's control. The late appellant questionnaire response is therefore admitted into the record as EAB Exhibit 1. 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 the record.

FINDINGS OF FACT: (1) On February 11, 2019, the Department mailed notice of the administrative decision at issue to claimant at her address of record, denying benefits to her effective January 20, 2019 for failing to comply instructions to register for work. The Department denied benefits to claimant from January 20, 2019 through March 9, 2019.

(2) On March 12, 2019, claimant met with a Department employee about her claim. *See* request for hearing. On March 13, 2019, claimant filed a late request for hearing asking “to appeal the denied claims” for the six weeks she had been denied. She said in the request, “I live outside the Salem area and was not able to come in a [*sic*] meet with a staff member until 03/12/2019.” The mailing address claimant listed on the late request for hearing was the same as the address to which the Department mailed the February 11th decision. The request for hearing did not state that she had not received a decision about the denied weeks.

(3) In the April 1, 2019 late questionnaire response, claimant asserts that the February 11th decision was not delivered to her home address until March 30th, weeks after she filed her late request for hearing in this case, and that she filed her late request for hearing when she did because she had transportation issues that had previously prevented her from traveling to Salem, Oregon.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing 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. The deadline for claimant to file a timely request for hearing in this case was March 4, 2019. Claimant did not file her request for hearing until March 13th. Her request for hearing was therefore nine days late.

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.

Claimant did not show good cause for the late request for hearing in this case. Claimant alleged that she did not receive the decision denying her benefits until March 30th. However, that was well over a month after the Department mailed the decision to her at her address of record. A letter duly directed and mailed is presumed to have been received in the regular course of the mail. ORS 40.135(1)(q). That presumption is rebuttable, but claimant did not describe any circumstances that would explain why a letter duly directed and mailed to her was not received. The fact that claimant knew about the denied claims weeks prior to the date she claimed to have received the decision, based upon the fact that she did not receive the weekly benefits she had been claiming during that six-week period, and claimed to have received the decision weeks after she had already filed the late request for hearing, does not support claimant’s allegation that she did not receive the decision denying her benefits until March 30th.

Even assuming that claimant did not receive a copy of the decision at issue in a timely fashion, the information claimant included with her late request for hearing shows that benefits were denied to her beginning the week ending January 26th all the way through March 9th. Claimant therefore was or should have been aware of the Department’s decision to deny her benefits well before the March 4th deadline for requesting a hearing. Given that claimant had constructive, if not actual, knowledge of the Department’s decision to deny her benefits well before the deadline for filing a timely request for hearing, and absent evidence that factors beyond her reasonable control prevented her from requesting a hearing after gaining such knowledge, claimant did not establish good cause for the late request for hearing. To any extent claimant’s failure to file earlier was the result of a mistake on claimant’s part, it was not an “excusable mistake” within the meaning of the administrative rules 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 did not establish good cause for the late request for hearing, and the request is therefore dismissed.

DECISION: Order No. 19-UI-126461 is affirmed.

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

DATE of Service: April 19, 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 الإستئناف 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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