

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0403

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On May 29, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit working for the employer without good cause (Decision # 111536). On June 18, 2018, decision # 111536 became final without claimant having filed a timely request for hearing. On August 2, 2018, the Department issued notice of an administrative decision, based upon decision #111536, concluding that claimant was overpaid \$4,146 in unemployment insurance benefits that she was liable to repay (decision # 120007). On August 22, 2018, decision # 120007 became final without claimant having filed a timely request for hearing.

On February 27, 2019, claimant filed a late request for hearing on decision # 111536 and decision # 120007. On March 4, 2019, ALJ Kangas issued Order No. 19-UI-125694, dismissing claimant's request for hearing on decision # 120007 as untimely without a showing of good cause subject to her right to renew the request by responding to an appellant questionnaire by March 18, 2019. On March 13, 2019, claimant filed a timely response to the appellant questionnaire. On March 14, 2019, the Office of Administrative Hearings (OAH) cancelled Order No. 18-UI-125694. On March 20, 2019, OAH served a notice of hearing scheduled for April 3, 2019 on decision # 120007. No notice of hearing was served on decision # 111536.

On April 3, 2019, ALJ R. Seideman conducted a consolidated hearing, and on April 5, 2019, issued Order No. 19-UI-127671, dismissing claimant's late request for hearing on decision # 111536, and Order No. 19-UI-127673, dismissing claimant's late request for hearing on decision # 120007. On April 25, 2019, claimant filed timely applications for review of both Orders with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order No. 19-UI-127673 and Order No. 19-UI-127671. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0403 and 2019-EAB-0455).

EAB considered the entire hearing record. EAB also considered claimant's written argument when reaching this decision to the extent it was relevant to EAB's determination of whether claimant filed a request for hearing within a reasonable time.

FINDINGS OF FACT: (1) Decision # 120007 stated that to be timely, any appeal from the decision had to be filed on or before August 22, 2018. Exhibit 1. Claimant did not file a request for hearing until February 27, 2019.

(2) Decision # 111536 stated that to be timely, any appeal from the decision had to be filed on or before June 18, 2018. EAB Exhibit 1¹. Claimant did not file a request for hearing until February 27, 2019.

(3) Starting in September 2018, the Department began sending claimant monthly billing statements for the overpayment.

(4) Claimant has continuously resided at the address of record with the Department since March 2, 2017. All of correspondence mailed to claimant by the Department was mailed to her address of record, and none of the correspondence was returned by the Postal Service. However, since March 2, 2017, claimant had experienced ongoing problems with the post office delivering mail to her and the other residents at her community.

(5) In November 2018, the Department served notice of a garnishment for claimant's wages based on the overpayment decision. Claimant received the November 2018, garnishment and called the Department on November 30, 2018, she verified her mailing address and phone number, and set up a payment plan regarding the overpayment.

(6) On December 28, 2018, the Department served notice of another garnishment due to claimant's failure to make a payment in accordance with the payment plan agreement. On January 4, 2019, claimant called the Department and verified her address and phone number.

(7) On February 4 and 19th, 2019, claimant spoke with a Department representative and discussed the overpayment decision and the possibility of an appeal. On February 21, 2019, claimant called the Department to verify the email address to file a late request for hearing. On February 27, 2019, claimant again called the department and obtained a fax number to send in a late request for hearing.

(8) Claimant learned of decisions # 111536 and # 120007 approximately on November 30, 2018, when she received the notice of garnishment from the Department, based on the overpayment decision, and she spoke with Department representative to enter into a payment plan.

CONCLUSIONS AND REASONS: Claimant failed to file a request for hearing within a reasonable time. Claimant's late request for hearing on decisions # 111536 and # 120007 are 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

¹ Decision # 111536 is marked 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 in the record.

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.

Here, claimant filed her request for hearing on the May 29, 2018 quit decision eight and a half months after the filing deadline, and she filed her request for hearing on the August 2, 2018 overpayment decision seven and a half months after the filing deadline. Assuming, arguendo, that claimant had good cause for failing to file a timely request for hearing because she was experiencing problems with her mail delivery at the time the Department mailed the decisions, and she did not receive the decision until after the June 18, 2018 and the August 22, 2018 filing deadlines, the next issue is whether she filed her request for hearings within a reasonable amount of time.

The records show that claimant had numerous conversations with Department representatives starting on November 30, 2018, regarding the overpayment decision. During the November 30, 2018, conversation claimant entered into a payment plan with the Department to avoid having her wages garnished. On January 4, 2019, claimant had a second conversation with a Department representative during which she discussed the possibility of an appeal of the overpayment decision. Claimant stated to the Department representative, “... if appeal goes through would she get a refund.” Transcript at 7. Claimant had another conversation with a Department representative on February 4, 2019, during which she stated that she would file a late hearing request for hearing. Based on that conversation, we infer that as of February 4, 2019, claimant knew about both decisions at issue and had not filed a request for hearing on either decision. Claimant’s statement to a Department representative during a February 19, 2019, conversation that she would send in a late request for hearing further implies that she did not file a request for hearing until after the 19th. Transcript at 9. Based on the record it appears that as of February 21, 2019, the Department had not received claimant’s request for hearing, because she sent it to the incorrect e-mail. The Department received claimant’s request for hearing on February 27, 2019, after she was provided with their fax number.

At a minimum, the circumstances which prevented claimant from filing a timely request for hearing ceased to exist on February 4, 2019, by which time she had discussed the possibility of a late request for hearing, and the refund of garnished wages if she prevailed in the hearing, and indicated she was going to file late requests for hearing. Claimant waited until late February 2019, to file a late request for hearing on both decisions, and therefore more than seven days after the circumstances that prevented a timely filing ceased to exist. Claimant therefore failed to file her request for hearing within a reasonable time as defined under OAR 471-040-0010.

Claimant’s late requests for hearing on decisions # 111536 and # 120007 therefore are dismissed.

DECISION: Order No. 19-UI-127671 and Order No. 19-UI-127673 are affirmed.

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

DATE of Service: May 23, 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 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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