

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0467

Application for Review Dismissed

FINDINGS OF FACT AND PROCEDURAL HISTORY: On January 18, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 150304). On January 23, 2019 filed a timely request for hearing. On February 20, 2019, ALJ Frank conducted a hearing, and on March 8, 2019 issued Order No. 19-UI-126007, concluding the employer discharged claimant for misconduct. On March 28, 2019, Order No. 19-UI-126007 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On May 9, 2019, claimant filed a late application for review with EAB.

CONCLUSIONS AND REASONS: The application for review should be dismissed.

On May 9, 2019, the appellant filed an application for review of Order No. 19-UI-126007 with the Employment Appeals Board (EAB). ORS 657.270(6) and ORS 657.270(7)(b) required the application for review to be filed no later than March 28, 2019. The deadline for filing a late application for review may be extended under certain circumstances. ORS 657.875; OAR 471-041-0070. In order to be considered for such an extension, however, an individual must establish “good cause” for the late filing; “good cause” is defined as “factors or circumstances beyond the applicant’s reasonable control” that “prevented timely filing.” OAR 471-041-0070(2)(a).

Claimant stated in his application for review that he “previously returned appeal forms to UI on or about March 27, 2019 and have been waiting for a new hearing date.” Although claimant’s statement suggests he might have filed, or attempted to file, a timely application for review of Order No. 19-UI-126007, his statement does not establish that is actually the case. For instance, he did not identify which appeal forms, describe what the forms stated, or state where to “UI” he returned them, nor do Department records suggest that any such documents were received. Nor did claimant’s description of “waiting for a new hearing date” suggest the forms he returned included an application for review in this case since EAB does not hold hearings, and does not establish new hearing dates in cases appealed to EAB.

OAR 471-041-0060(1) defines an application for review as being either a form or a request for “review of a specific ALJ Order,” or something that “otherwise expresses an intent to appeal an ALJ Order.” In

the absence of details about what claimant filed, where he filed it, or why he filed it, and the absence of evidence that the appeal forms claimant filed requested review of a specific ALJ order or expressed an intent to appeal an ALJ order, claimant has not established that the appeal forms he filed included an application for review of the referenced case. If claimant has such evidence, he may file a request for reconsideration with EAB that includes detailed information about his initial attempt to appeal Order No. 19-UI-126007. Claimant should note that his request for reconsideration must comply with all of the administrative rule provisions governing reconsideration requests (see below, emphasis added), and must be filed within the time allowed, or it will be subject to dismissal.¹

DECISION: The application for review filed May 9, 2019 is dismissed. Order No. 19-UI-126007 remains undisturbed.

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

DATE of Service: May 21, 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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¹ OAR 471-041-0145 Reconsideration

(1) Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice.

(2) The request is subject to dismissal unless it:

(a) Includes a statement that a copy was provided to the opposing party or parties. Example: “I declare that on [date] I sent a copy of this document to the opposing party or parties, addressed as follows: ABC Company, [description of sending method].”

(b) Is filed on or before the 20th day after the decision sought to be reconsidered is mailed.

(A) Requests for reconsideration may be filed in person, or by mail or other carrier, fax, or electronic means.

(B) For purposes of this rule the filing date is determined using the same criteria listed in OAR 471-041-0065.

(C) EAB will make copies of any requests received available to the Oregon Employment Department by electronic means.



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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