

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0518

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On January 29, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 120631). On February 19, 2019, decision # 120631 became final without claimant having filed a timely request for hearing. On May 8, 2019, claimant filed a late request for hearing. On May 13, 2019, ALJ Kangas issued Order No. 19-UI-129806, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by May 27, 2019. Claimant did not respond to the questionnaire by May 27, 2019. On June 1, 2019, claimant filed a late response to the appellant questionnaire and a timely application for review with the Employment Appeals Board (EAB). On June 3, 2019, ALJ Kangas mailed a letter stating that the questionnaire response was late and would not be considered. This matter is before EAB on claimant's timely application for review of Order No. 19-UI-129806.

EVIDENTIARY MATTER: Claimant's questionnaire response is admitted into evidence as EAB Exhibit 1 as necessary to complete the record. OAR 471-041-0090(1)(a). A copy has been mailed to the parties with this decision. OAR 471-041-0090(2). Any party who objects to our admitting EAB Exhibit 1, may file a written objection within ten days from the date of this decision. *Id.* Unless such objection is received and sustained, EAB Exhibit 1 will remain in the record.

FINDINGS OF FACT: The Department mailed notice of decision # 120631 to claimant at his address of record. Claimant did not contact the Department about the decision until he "received the info," "received documentation," and "received the warrant documentation." EAB Exhibit 1.

CONCLUSIONS AND REASONS: Claimant's late request for hearing should be 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 the decision 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.

Claimant stated in his appellant questionnaire that he “was never made aware of the issue” until he “received the info,” “received documentation,” and “received the warrant documentation.” However, notice of decision # 120631 was mailed to claimant at his address of record, the same address that he has continued to use to appeal that decision. Claimant has not suggested that he experienced or experiences problems receiving mail directed to that address. Under Oregon law, a letter duly directed and mailed is generally presumed to have been received in the regular course of the mail. ORS 40.135(1)(q). Absent circumstantial evidence of mail delivery or receipt problems that suggest claimant did not receive decision # 120631, the law presumes that claimant received it. Claimant did not include in his appellant questionnaire any reason why, given the presumption that he received decision # 120631, he did not file a timely request for hearing on that decision. In the absence of such an explanation, claimant did not establish good cause for the late request for hearing under those circumstances.

Even if claimant had proved that he did not receive decision # 120631 when it was mailed to him, the outcome of this decision would remain the same because he did not provide any evidence suggesting that he met the “reasonable time” requirement. Claimant’s appellant questionnaire stated that he became aware of the denial of benefits resulting from decision # 120631 when he “received the info,” “received documentation,” and “received the warrant documentation.” The date(s) when he received the “info,” “documentation,” or “warrant documentation” therefore would be considered the date(s) the circumstances that prevented a timely filing ceased to exist. Without claimant having provided such dates, the record does not show whether claimant’s May 8, 2019 filing occurred within seven days of when the circumstances that prevented a timely filing ceased to exist; without that information, claimant has not established that he filed his late request for hearing within the “reasonable time” as required by ORS 657.875 and OAR 471-040-0010. Claimant’s late request for hearing must therefore be dismissed. Decision # 120631 remains undisturbed.

DECISION: Order No. 19-UI-129806 is affirmed.

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

DATE of Service: June 11, 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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