

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0535

Late Application for Review Allowed
Aplicación Tardía Para Revisión De Orden Permitida
Reversed, Hearing on Decision # 101918 Allowed
Reversada, Se Permite una Audiencia Sobre la Decisión # 101918

PROCEDURAL HISTORY AND FINDINGS OF FACT: (1) On March 20, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 101918). The Department served notice to claimant at a Devonshire Court address that did not include an apartment number. Claimant filed a timely request for hearing.

(2) On April 9, 2019, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for April 22, 2019. OAH mailed the notice of hearing to claimant at a Devonshire Court address that did not include an apartment number. On April 22, 2019, the U.S. Postal Service returned the notice of hearing to OAH as undeliverable.

(3) On April 22, 2019, claimant failed to appear for the scheduled hearing, and ALJ Scott issued Order No. 19-UI-128604, dismissing claimant's request for hearing for failure to appear. OAH mailed Order No. 19-UI-128604 to claimant at an address that did not include an apartment number. On May 1, 2019, claimant filed a timely request to reopen the hearing using the form that had been attached to Order No. 19-UI-128604. The form did not include an apartment number, and claimant did not hand-write an apartment number onto that form.

(4) On May 2, 2019, ALJ Kangas issued Order No. 19-UI-129210, denying claimant's request to reopen. OAH mailed notice of Order No. 19-UI-129210 to claimant using a Devonshire Court address that included an apartment number. Claimant did not receive Order No. 19-UI-129210. On May 22, 2019, Order No. 19-UI-129210 became final without claimant having filed an application for review with the Employment Appeals Board (EAB).

(5) On June 5, 2019, claimant filed a late application for review with EAB. Claimant's application for review was handwritten on a piece of paper; she did not use the form that was included with Order No. 19-UI-129210.

CONCLUSIONS AND REASONS: Claimant's late application for review is allowed. Order No. 19-UI-129210 is reversed as unsupported by the record and claimant is entitled to a hearing on the merits of decision # 101918.

Late application for review. An application for review is timely if it is filed within 20 days of the date that OAH mailed the decision for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20 day filing period may be extended a "reasonable time" upon a showing of "good cause." ORS 657.875; OAR 471-041-0070(2). "Good cause" means that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A "reasonable time" is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

Claimant filed a late application for review of Order No. 19-UI-129210 because she did not receive that decision. It appears the decision was mailed to her at an address that was not her address of record with the Department. Claimant's failure to receive a decision mailed to her at an address other than her address of record with the Department was likely a factor or circumstance beyond her reasonable control that prevented a timely filing. Given the short periods of time between the date of the Order and the date she filed her late application for review, we infer that she filed the late application for review within a reasonable time after learning of the decision. Claimant's late application for review is allowed.

Request to reopen. ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. "Good cause" exists when the requesting party's failure to appear at the hearing arose from an excusable mistake or from factors beyond the party's reasonable control. OAR 471-040-0040(2) (February 10, 2012). The requesting party is required to set forth the reasons for missing the hearing in a written statement. OAR 471-041-0040(3).

Claimant did not set forth her reasons for missing the hearing in a written statement as required by the OAH rules. However, when a party fails to appear for a hearing, the first issue is whether the absent party was afforded due process of law, i.e., whether the notice of hearing was mailed to the absent party at their last known address as shown by the record of the Director. If not, a continuance is in order. If, despite the lack of notice, a decision is issued, the decision may be challenged by the absent party on constitutional grounds. The party need not satisfy the requirements of OAR 471-041-0090. Here, it is plain on the face of the record that claimant did not receive notice of the hearing because it was returned to sender by the U.S. Postal Service. Accordingly, claimant never received notice of the hearing, and claimant therefore never had the opportunity to appear at the hearing. Because the record clearly establishes that claimant was not afforded due process, and was deprived of a reasonable opportunity for a fair hearing, Order No. 19-UI-129210 is reversed. Claimant is entitled to a hearing on the merits of decision # 101918.

DECISION: Order No. 19-UI-129210 is set aside. *La Orden de la Audiencia 19-UI-129210 se pone a un lado.*

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

DATE of Service: June 13, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-129210 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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***NOTA:** La falta de cualquier parte de presentarse a la audiencia sobre la remisión no reinstalará la Orden de la Audiencia No. 19-UI-129210, ni devolverá esta orden a la EAB. Solamente una aplicación oportuna para revisión de la orden subsiguiente de la nueva audiencia volverá este caso a la EAB.*

Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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

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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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