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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0580

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On February 7, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from December 16, 2018 through January 5, 2019 (decision # 154840). On February 27, 2019, decision # 154840 became final without claimant having filed a timely request for hearing. On April 26, 2019, the Department served notice of another administrative decision assessing a $1,827 overpayment that claimant was liable to repay (decision # 131116). On May 16, 2019, decision # 131116 became final without claimant having filed a timely request for hearing. On May 29, 2019, claimant filed late requests for hearing on both decisions. On June 4, 2019, ALJ Kangas issued Order No. 19-UI-131009, dismissing claimant's late request for hearing on decision # 131116, and Order No. 19-UI-131010, dismissing claimant's late request for hearing on decision # 154840, both subject to his right to renew the requests by responding to an appellant questionnaire by June 18, 2019. On June 21, 2019, claimant filed late responses to the appellant questionnaires with the Office of Administrative Hearings (OAH), and timely applications for review with the Employment Appeals Board (EAB). On June 26, 2019, ALJ Kangas issued letters stating that claimant's late questionnaire responses would not be considered. This matter is before EAB on claimant's timely applications for review of Orders No. 19-UI-131009 and 19-UI-131010.

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-131009 and 19-UI-131010. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0580 and 2019-EAB-0581).

EAB considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence, claimant's late response to the appellant questionnaire, has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

FINDINGS OF FACT: (1) Claimant did not know when he received notice of decisions # 131116 and 154840. Although they were mailed to his address of record, they were mixed up with his son's mail and claimant did not know they had arrived.

(2) Claimant was in continual claim status from November 18, 2018 through May 11, 2019, and received benefits each of those weeks. From May 12, 2019 through June 1, 2019, claimant continued to claim benefits but did not receive a weekly benefit payment.[1]

(3) Claimant filed his late requests for hearing on May 29th after he stopped getting his benefits.

CONCLUSIONS AND REASONS: Claimant's late requests for hearing are denied.

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 did not establish good cause for the late requests for hearing, nor did he establish that he filed his late requests within a reasonable time of when those circumstances ceased to exist.

To the extent that he did not file timely requests for hearing because his mail was inadvertently mixed up with his son's mail, it was within his reasonable control to monitor his mail, and his failure to do so 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 also stated in his late appellant questionnaire that he was not expecting anything from the Department around the time that the decisions were issued in these cases, likely by way of explaining why he did not more closely monitor his mail. However, claimant had active claims for benefits at all relevant times and, as such, was reasonably on notice that the Department might correspond with him if issues arose on the claim. Receiving mail duly addressed to him in February 2019 and April 2019 was within claimant's reasonable control, and, for reasons already stated, was not an excusable mistake. Claimant did not establish good cause for the late requests for hearing in these cases.

Claimant also did not establish that he filed his late requests for hearing within the seven-day "reasonable time" period after the factors that prevented a timely filing ceased to exist. For instance, claimant stated in his late questionnaire response that he was prompted to file his late requests for hearing on the date he filed because he did not get his benefits. However, claimant filed his late requests for hearing on May 29, 2019. By that time, claimant had not been paid benefits in over two and one-half weeks. Because two and one-half weeks exceeds seven days, it was not a "reasonable time." Because

[1] EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence, Department records detailing the weeks claimant claimed and was paid benefits, has been marked as EAB Exhibit 2, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 2 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(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

claimant did not file his late requests for hearing within a reasonable time, the deadlines cannot be extended.

Claimant's late requests for hearing are denied. Decisions # 131116 and 154840 remain undisturbed.

DECISION: Order Nos. 19-UI-131009 and 19-UI-131010 are affirmed.

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

DATE of Service: July 2, 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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