

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0692

Modified
Request to Reopen Allowed
Late Request for Hearing Allowed – Merits Hearing Required

PROCEDURAL HISTORY: On March 19, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work for a disqualifying act (decision # 100533). On April 8, 2019, decision # 100533 became final without claimant having filed a timely request for hearing. On April 19, 2019, claimant filed a late request for hearing. On April 23, 2019, ALJ Kangas issued Order No. 19-UI-128653, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by May 7, 2019. On April 30, 2019, claimant responded to the appellant questionnaire. On May 2, 2019, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 19-UI-128653 was canceled. On May 7, 2019, OAH mailed notice of a hearing scheduled for May 17, 2019, at which time claimant failed to appear. On May 17, 2019, ALJ Janzen issued Order No. 19-UI-130153, dismissing claimant's request for hearing for failure to appear. On May 23, 2019, claimant filed a timely request to reopen the May 17th hearing. On June 20, 2019, OAH mailed notice of a hearing scheduled for July 3, 2019. On July 3, 2019, ALJ Janzen conducted a hearing, and on July 9, 2019 issued Order No. 19-UI-132956, allowing claimant's request to reopen and re-dismissing claimant's late request for hearing. On July 23, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's request to reopen is **adopted**. The remainder of this decision will focus entirely upon the late request for hearing issue.

FINDINGS OF FACT: (1) At all relevant times, claimant has health conditions that affect his memory. As a result, his short-term memory is "terrible," and each day he cannot remember the things that happened the previous day. Transcript at 7.

(2) On March 29, 2019, claimant prepared a letter appealing decision # 100533, had a friend prepare a character reference, in anticipation of faxing both to the Department. Claimant could not fax from his house. He had to go to the library to copy his materials and then to the post office to fax them.

(3) On approximately April 19, 2019, claimant realized that the fax did not go through, and re-sent the letter to the Department via email the same day.

CONCLUSIONS AND REASONS: Claimant's late request for hearing should be allowed; claimant is entitled to a hearing on the merits of decision # 100533.

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.

The order under review concluded that claimant did not have good cause for his late request for hearing because filing a timely request for hearing was within his reasonable control. Order No. 19-UI-132956 at 5. The record supports the conclusion that filing timely was within claimant's reasonable control. Claimant was able to look closely at that fax on April 19th, and determine from doing so that the fax did not go through. It was likely within claimant's reasonable control to look closely at the fax on March 29th and discover at that time that it did not go through.

However, under OAR 471-040-0010, determining that filing timely was within claimant's reasonable control does not end the inquiry. The next inquiry is whether or not claimant's late request for hearing was the result of an excusable mistake. An "excusable mistake" is generally considered to be a mistake that raises a due process issue, or was the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Claimant provided somewhat inconsistent testimony about events related to his late request for hearing, likely because of the difficulties he experiences with his memory. Considering the totality of the evidence, however, it is more likely than not that claimant attempted to fax a timely request for hearing to the Department on March 29th via his local post office, and that that fax attempt was not successful.

Claimant made substantial efforts to request a hearing on March 29th, including preparing a one and one-half page letter explaining his circumstances, asking a friend to prepare a character reference letter, going to the library to copy the materials, and then going to the post office to attempt to fax the materials. It appears that claimant's circumstances – including his memory difficulties and the failure of the March 29th fax attempt – amounted to an inability to follow directions and successfully request a hearing on time, despite his substantial efforts to do so. His late request for hearing was therefore the result of an excusable mistake.

Claimant showed good cause for the late request for hearing. He is entitled to a hearing on the merits of decision # 100533.

DECISION: Order No. 19-UI-132956 is modified, as outlined above.

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

DATE of Service: August 9, 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 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 Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación 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

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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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