

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0729

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On October 1, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$1,980 overpayment, \$297 monetary penalty, and 15 penalty weeks (decision # 201381). On October 21, 2015, decision # 201381 became final without claimant having filed a timely request for hearing. On June 27, 2019, claimant filed a late request for hearing. On July 9, 2019, ALJ Kangas issued Order No. 19-UI-132928, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by July 23, 2019. On July 15, 2019, claimant responded to the questionnaire. On July 17, 2019, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 19-UI-132928 was canceled, and on July 18, 2019 OAH mailed notice of a hearing scheduled for July 31, 2019. On July 31, 2019, ALJ Scott conducted a hearing, and on August 1, 2019, issued Order No. 19-UI-134380, re-dismissing claimant's late request for hearing. On August 6, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) In 2015, the Department mailed notice of decision # 201381 to claimant at his address of record. Claimant was experiencing problems receiving his mail and his wife contacted the postal service to attempt to resolve it. Claimant did not receive decision # 201381.

(2) In October 2015, claimant had contact with the Department about a voluntary leaving decision that was the basis for decision # 201381, and the Department told claimant about his appeal rights related to the voluntary leaving decision. Claimant did not know about decision # 201381 because of that contact with the Department.

(3) In May 2016, claimant began having contact with the Department about a garnishment resulting from decision # 201381. Claimant was not aware that an administrative overpayment decision was the basis of the garnishment, did not get a copy of decision # 201381, did not know the contents of decision # 201381, and did not understand that he could appeal anything related to decision # 201381 or the garnishment. Claimant did not know there was anything he could do to fight the overpayment, and decided to repay most of it with tax return offsets.

(4) Sometime prior to June 27, 2019, claimant filed a new claim for benefits. He was told that he was not disqualified from receiving benefits, but that benefits were not payable to him because he had to serve a 15-week penalty disqualification period. On June 27, 2019, claimant had contact with the Department and for the first time learned of decision # 201381 and the disqualification penalty contained therein. The same day, claimant filed a late request for hearing on that decision.

CONCLUSIONS AND REASONS: Claimant's late request for hearing is allowed, and a hearing on the merits of decision # 201381 is required.

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 had good cause for missing the 20-day filing deadline set forth in decision # 201381 because his mail delivery problems prevented him from receiving notice of that decision. Order No. 19-UI-134380 at 4. The record supports that conclusion.

The order under review also concluded that despite the showing of good cause, claimant's late request for hearing had to be dismissed because he did not file his late request for hearing with a "reasonable time" after the circumstances that prevented a timely filing ceased to exist. Order No. 19-UI-134380 at 4. The record does not support that conclusion.

Notwithstanding claimant's knowledge of an overpayment, garnishment, and repayment of the debt, the circumstances that prevented him from filing a timely request for hearing on decision # 201381 were that he did not know the decision existed or that he could appeal it. The circumstances that prevented a timely filing therefore did not cease to exist until claimant found out the decision existed and he had the right to appeal it. Therefore, although claimant was informed of the existence of an overpayment in 2016, there is nothing in this record suggesting that he knew about the existence of an administrative overpayment decision he could appeal at any point prior to June 27th, the day he filed his late request for hearing. Because claimant requested a hearing on decision # 201381 on the same day he learned that decision existed, his late request for hearing was filed within the 7-day "reasonable time" period.

The order under review also suggested that claimant's lack of knowledge about the penalty week disqualification set forth in decision # 201381 did not amount to good cause for his failure to request a hearing in 2016 when he learned of the overpayment, reasoning that the overpayment and penalties were part of the same decision, and OAR 471-040-0010(1)(b)(B) states that "not understanding the implications of a decision is not good cause for failing to timely request a hearing." Order No. 19-UI-134380 at 4. In so finding, the order conflated the "good cause" and "reasonable time" analyses. The order also misquoted OAR 471-040-0010(1)(b)(B), which actually states that good cause does not include: "Not understanding the implications of a decision or notice *when it is received.*" (Emphasis added.) Therefore, had claimant received decision # 201381 and not understood its implications, that

rule would have applied. Here, however, claimant's failure to understand the implications of a decision he did not receive is not excluded from the definition of good cause.

For the foregoing reasons, claimant established good cause to extend the filing deadline in this case a reasonable time to June 27th. He therefore is entitled to a hearing on the merits of decision # 201381.

DECISION: Order No. 19-UI-134380 is set aside, as outlined above. A hearing on the merits of decision # 201381 is required.

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

DATE of Service: August 22, 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

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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