

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0758

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On November 19, 2018, the Oregon Employment Department (the Department) mailed notice of an administrative decision concluding claimant quit work without good cause and was disqualified from benefits effective June 17, 2018 (decision # 101939). On November 20, 2018, the Department mailed notice of another administrative decision assessing a \$12,080 overpayment, \$1,812 monetary penalty, and 52 penalty weeks (decision # 195642). On November 21, 2018, claimant filed a timely request for hearing on decision # 101939. On December 4, 2018, the Office of Administrative Hearings (OAH) mailed notice of a hearing on decision # 101939 scheduled for December 18, 2018.

On December 10, 2018, decision # 195642 became final without claimant having filed a timely request for hearing. On December 18, 2018, claimant failed to appear for the hearing on decision # 101939, and ALJ Murdock issued Order No. 18-UI-121433, dismissing claimant's request for hearing on that decision. On January 7, 2019, Order No. 18-UI-121433 became final without claimant having filed a timely request to reopen or application for review.

On June 6, 2019, claimant filed a late request for hearing on decision # 195642. On June 11, 2019, ALJ Kangas issued Order No. 19-UI-131457, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by June 25, 2019. Claimant filed a timely response to the questionnaire. On July 9, 2019, OAH mailed a letter stating that Order No. 19-UI-131457 was canceled. On July 11, 2019, OAH mailed notice of a hearing scheduled for July 22, 2019. On July 22, 2019, ALJ Scott conducted a hearing, and on July 23, 2019 issued Order No. 19-UI-133808, re-dismissing claimant's late request for hearing. On August 10, 2019, claimant filed a timely application for review of that order with the Employment Appeals Board (EAB). This matter is before EAB on claimant's application for review of Order No. 19-UI-133808 only.

FINDINGS OF FACT: (1) On November 20, 2018, the Department mailed notice of decision # 195642 to claimant at his address of record.

(2) On November 21, 2018, prior to receiving notice of decision # 195642, claimant filed a request for hearing on decision # 101939. The request stated:

I am requesting a hearing to appeal an administrative decision to deny benefits. In the letter I received it states I quit due to a disagreement with a coworker. This is not true I was let go. I have an audio recording that would support my claim as well.

EAB Exhibit 1.¹ Claimant did not mention the overpayment, the overpayment decision, or indicate that he did not think he should have to repay benefits or be liable for penalties in that request.

(3) In late November 2018, claimant received decision # 195642. Decision # 195642 stated in bold font that claimant was disqualified from 52 weeks of benefits and had to repay \$13,892.00 to the Department. The decision also stated that claimant should see an enclosed form for appeal rights, and that “[t]o be timely, any appeal from this decision must be filed on or before December 10, 2018.”

(4) Claimant disagreed with decision # 195642. He contacted a Department employee, who “advised . . . that it would be in my best interest to . . . do the appeal process.” Transcript at 11.

(5) After filing his request for hearing on decision # 101939, claimant worked with his employer and the Department to dispute the work separation decision. Claimant did not appear for the hearing on decision # 101939, and he did not file a timely request for hearing or contact the Department about the contents of decision # 195642.

(6) After missing the hearing on decision # 101939, claimant started to receive notices about the overpayment described in decision # 195642. He thought the matter would be resolved if his employer retracted allegations that claimant quit work. He did not request a hearing on decision # 195642.

(7) On January 2, 2019, the Department mailed claimant an overpayment billing statement. On January 16, 2019, the Department’s overpayment recovery unit began attempting to reach claimant. Claimant did not respond. On February 6, 2019, March 6, 2019, April 3, 2019, and May 1, 2019, the Department mailed claimant additional overpayment billing statements. Claimant did not respond.

(8) On April 26, 2019, claimant had a conversation with a Department employee about the overpayment and other matters associated with decisions # 101939 and 195642. Claimant was “kind of getting a better idea of what was actually – what had gone on” and “started the process of – of having my Employer also get involved and making calls to the – the Employment Department as well trying to get all this sorted out.” Transcript at 15. Claimant still tried to speak with Department employees about the matters instead of appealing decision # 195642 or requesting that the hearing on decision # 101939 be reopened.

(9) On June 6, 2019, claimant filed a late request for hearing on decision # 195642.

¹ EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant’s November 21, 2018 request for hearing, and 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.

CONCLUSIONS AND REASONS: Claimant's late request for hearing is 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. For a party's request for hearing to be valid and applied to a particular case, the request must either specifically request a hearing or "otherwise express[] a present intent to appeal and it can be determined what issue or decision is being appealed." OAR 471-040-0005(1). The request must include some indication that the party is aware the underlying decision exists and that the party wants to challenge it. *See Kroetch v. Employment Department*, 289 Or. App. 291, 409 P.3d 60 (2017).

Claimant argued that he filed a timely request for hearing decision # 195642. The record shows that claimant did in fact file a request for hearing, and that it was timely, but that was a request for a hearing on decision # 101939, not decision # 195642. Claimant's timely request for hearing on decision # 101939 does not apply to decision # 195642 because it did not include any suggestion that he intended it to apply to the overpayment and misrepresentation matter at issue in decision # 195642. The request did not mention or allude to the overpayment, misrepresentation, or his disagreement facts listed on the face of decision # 195642, nor did claimant include anything on the request suggesting that he did not think he owed money to the Department. In the absence of some indication on claimant's November 21st request for hearing that he knew about decision # 195642 or the issues decided therein, and intended the request to apply to decision # 195642, claimant's November 21, 2018 request for hearing is not a valid request for hearing on the decision at issue in this case.

The record on review contains no evidence of a request for hearing on decision # 195642 until June 6, 2019, well over seven months after decision # 195642 was issued. Claimant's request for hearing on decision # 195642 therefore was late. 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. Not understanding the implications of a decision when it is received is not good cause for a late filing. OAR 471-040-0010(1)(b)(B).

Claimant did not have good cause for the late request for hearing in this case. He received a copy of decision # 195642 before the appeal deadline, disagreed with it, and had been advised by a Department employee to appeal adverse decisions, but chose not to request a hearing. Claimant's apparent confusion about how to dispute the Department's decision does not amount to good cause, since failing to understand the implications of a decision is specifically excluded from the definition of good cause. Although claimant's failure to file a timely request for hearing under the circumstances was likely the result of a mistake on claimant's part, it 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.

Even if claimant had shown good cause for the late filing, the deadline in this matter could only have been extended a "reasonable time," which is seven days after the circumstances that prevented a timely filing ceased to exist. Based upon claimant's own testimony at the hearing in this case, claimant spoke

with a Department employee about the overpayment on April 26th and began to understand what was happening with respect to his cases at that time. The seven-day “reasonable time” period in which claimant could file a late request for hearing in this case therefore ended seven days later in early May 2019. Claimant waited more than another month before filing his late request for hearing. Claimant therefore did not file the late request within a “reasonable time,” and his late request for hearing would have to be dismissed on that basis, too.

Claimant did not show good cause for the late filing, and did not file his June 6th late request for hearing within a reasonable time. His late request for hearing must therefore be dismissed.

DECISION: Order No. 19-UI-133808 is affirmed.

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

DATE of Service: August 28, 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 الاستئناف 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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