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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-0768

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On June 19, 2019, the Oregon Employment Department (the Department) served two notices of two administrative decisions, one concluding claimant was not available for work from May 26, 2019 through June 8, 2019 and until the conditions of unavailability ended (decision # 161319), and the other concluding that the employer discharged claimant for misconduct (decision # 160920). On July 9, 2019, decisions # 161319 and 160920 became final without claimant having filed a timely request for hearing. On July 11, 2019, claimant filed late requests for hearing on both decisions.

On July 16, 2019, ALJ Kangas issued Order Nos. 19-UI-133380 and 19-UI-133381, dismissing claimant's late requests for hearing subject to his right to renew the requests by responding to appellant questionnaires by July 30, 2019. On July 30, 2019, claimant attempted to respond to the questionnaires but mailed them to the wrong address and they were returned to sender. On August 5, 2019, claimant responded to the questionnaires and filed timely applications for review of both orders with the Employment Appeals Board (EAB). On August 13, 2019, ALJ Kangas mailed letters stating the claimant's questionnaire responses were late and would not be considered.

This matter is before EAB based upon claimant's timely applications for review of both orders. Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Order Nos. 19-UI-133380 and 19-UI-133381. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0768 and 2019-EAB-0769).

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 response to the appellant questionnaires, 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 will remain in the record.

FINDINGS OF FACT: (1) Before the issuance of decisions # 161319 and 160920, claimant made repeated attempts to reach the Department employee assigned to adjudicate his claim to provide information about his work separation and availability for work. Claimant and the employee played “phone tag.” EAB Exhibit 1.

(2) Approximately one week later, sometime around June 23, 2019, claimant received decisions # 161319 and 160920 stating that he had been denied benefits. Claimant disagreed with the decisions because they had been reached without any input from him as to what happened. Claimant thought he would still be speaking with the Department employee assigned to adjudicate his claim, and “didn’t think I needed to or it was necessary” to file a hearing request before the deadline. EAB Exhibit 1.

(3) Claimant continued to try to reach the Department employee about his claim so someone could hear his side of the story before making a final decision about his benefits. On July 11, 2019, claimant spoke with a different Department employee who accepted his requests for hearing by telephone.

CONCLUSIONS AND REASONS: Claimant’s late requests for hearing should be 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. 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 filed late requests for hearing in these cases because he was unable to discuss his situation with a Department employee before the decisions were issued, disagreed that decisions were reached without him having had a chance to explain things, and after receiving the decisions continued to try to reach someone at the Department to discuss his cases. Notably, however, the decisions the Department mailed to claimant did not instruct claimant to continue trying to reach the adjudicator to explain his side of what happened. Rather, the decisions stated that benefits had been denied, and stated on page two, “You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than July 9, 2019. This decision **DENIES** benefits.” *See* Decisions # 161319 and 160920 (Emphasis in originals.) Although claimant’s questionnaires explain why he continued to try to reach the Department employee adjudicating his claim, they do not explain why he did not also request to appeal the decisions that denied him benefits, or establish that it was beyond his reasonable control to do so.

Nor were the late requests for hearing the result of an excusable mistake. Although claimant’s failure to file timely requests for hearing in these cases was 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.

Claimant did not show good cause for the late requests for hearing in these cases. His requests therefore are dismissed.

DECISION: Order Nos. 19-UI-133380 and 19-UI-133381 are affirmed.

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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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