

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0774

Affirmed
Late Request to Reopen Denied

PROCEDURAL HISTORY: On May 8, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct, and claimant was disqualified from benefits effective April 14, 2019 (decision # 82829). Claimant filed a timely request for hearing. On June 10, 2019, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for June 20, 2019, at which time claimant failed to appear. On June 21, 2019, ALJ A. Mann issued Order No. 19-UI-132050, dismissing claimant's request for hearing for failure to appear. On July 11, 2019, Order No. 19-UI-132050 became final without claimant having filed a timely request to reopen the hearing. On July 13, 2019, claimant filed a late request to reopen the hearing. On July 24, 2019, OAH mailed notice of a hearing scheduled for August 5, 2019. On August 5, 2019, ALJ Schmidt conducted a hearing, and on August 9, 2019 issued Order No. 19-UI-134823, denying claimant's request to reopen. On August 13, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Between June 28, 2019 and July 6, 2019, claimant received Order No. 19-UI-132050. He read the decision, including instructions for filing a request to reopen, and the filing deadline.

(2) Between July 1, 2019 and July 13, 2019, claimant had dozens of job interviews. He was preoccupied preparing for the interviews and finding transportation to them. He planned to focus on the reopen matter when he finished his scheduled activities.

(3) On July 11, 2019, claimant called OAH to discuss requesting reopening and was given information about how to file. He did not file a timely request to reopen that day. On July 13, 2019, claimant filed a late request to reopen the hearing, which was two days after the filing deadline expired.

CONCLUSIONS AND REASONS: Claimant's late request to reopen is denied.

ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision

was issued and shows good cause for failing to appear. The period within which a party may request reopening may be extended if the party requesting reopening as good cause for failing to request reopening within the time allowed, and acts within a reasonable time. OAR 471-040-0041(1) (February 10, 2012). "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control. OAR 471-040-0041(2). "A reasonable time," is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(3). The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which OAH shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time. OAR 471-040-0041(4).

Claimant did not show good cause to file a late request to reopen in this case. Although claimant explained his reasons for not filing a timely request for hearing, he did not establish that it would have been "beyond his reasonable control" to find the time to submit a timely request to reopen despite his busy interview schedule. Although claimant's failure to file on time was likely the result of a mistake on his 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. Absent a showing of good cause, claimant's late request to reopen must be denied.

DECISION: Order No. 19-UI-134823 is affirmed.

J. S. Cromwell and S. Alba;
D. P. Hettle, 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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.

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