

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0795

Applications for Review Dismissed

FINDINGS OF FACT AND PROCEDURAL HISTORY: On October 3, 2008, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause and was disqualified from benefits effective February 17, 2008 (decision # 73402). On October 6, 2008, the Department served notice of an administrative decision assessing a \$3,240 overpayment, \$486 monetary penalty, and 52 penalty weeks (the overpayment decision). On October 23, 2008, decision # 73402 became final without claimant having filed a request for hearing. On October 27, 2008, the overpayment decision became final without claimant having filed a request for hearing.

On November 6, 2008, claimant filed a late request for hearing on decision # 73402 and the overpayment decision. On November 18, 2008, ALJ Murdock issued Hearing Decisions 08-UIB-17253-D and 08-UIB-17255-D, dismissing claimant's late request for hearings subject to claimant's right to renew the request by responding to the appellant questionnaires within 14 days. On November 29, 2008, claimant submitted a single timely response to the appellant questionnaire about the late request for hearing on decision # 73402. The Office of Administrative Hearings (OAH) applied that questionnaire only to claimant's late request for hearing on the overpayment case, and not to the late request for hearing on decision # 73402. ALJ Elmore reviewed claimant's response, and on December 4, 2008 issued Hearing Decision 08-UIB-18249, dismissing claimant's November 6, 2008 late request for hearing on the overpayment decision.

On September 25, 2019, claimant filed late applications for review of Hearing Decisions 08-UIB-17253-D and 08-UIB-18249 with the Employment Appeals Board (EAB).¹ Pursuant to OAR 471-041-0095, EAB consolidated its review of Hearing Decisions 08-UIB-17253-D and 08-UIB-18249. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0625 and 2019-EAB-0795).

¹ In the request claimant asked for "a late hearing on behalf of my garnishment Oct 2008" and "decision # 73402." Because claimant has already had hearing proceedings on the overpayment that is the most likely cause of the garnishment and decision # 73402, which resulted in Hearing Decisions 08-UIB-17253-D and 08-UIB-18249, claimant's request was construed as an application for EAB to review the records in those matters under ORS 657.270 and OAR 471-041-0060.

FINDINGS OF FACT: On December 22, 2008, claimant filed a weekly claim for unemployment insurance benefits for the week of December 14, 2008 to December 20, 2008 (week 51-08).² Claimant ceased claiming after that week. In February 2009, claimant moved from Oregon and stopped getting mail from the Department.³

CONCLUSIONS AND REASONS: The applications for review are dismissed.

On September 25, 2019, claimant filed applications for review of Hearing Decisions 08-UIB-071253-D and 08-UIB-18249 with the EAB. ORS 657.270(6) and ORS 657.270(7)(b) required the applications for review to be filed no later than December 8, 2008 and December 24, 2008, respectively. The deadline for filing late applications for review may be extended “a reasonable time” upon a showing of “good cause.” *See* ORS 657.875; OAR 471-041-0070.

It is clear from review of the record in these cases that inconsistencies occurred during the “direct review” hearing proceedings in these cases. For example, claimant was provided with two very similar questionnaires and returned only the questionnaire that applied to decision # 73402, which was then applied only to the overpayment decision when it likely should have been applied to both. Claimant thereafter received only a hearing decision re-dismissing the request for hearing on the overpayment decision, and ostensibly should have received hearing decisions re-dismissing both of the requests for hearing. Additionally, the hearing decision sent dismissing the late request for hearing on the overpayment decision contained obvious errors, from referring to claimant as “he” to focusing on one questionnaire answer suggesting claimant did not have good cause to the exclusion of another answer suggesting claimant might have had good cause. Specifically, claimant stated on the questionnaire that claimant faxed a letter to the Department on October 15th – after decision # 73402 and the overpayment decision were issued – explaining what happened to the job at issue in decision # 73402 and opening up the possibility that claimant intended the faxed letter to request a hearing on the Department’s administrative decisions. The ALJ should have ordered a hearing to be held to inquire into the nature and content of the letter claimant faxed about the administrative decision, and erred by failing to do so.

Aside from the indicators that claimant might have been deprived of some procedures during the direct review processes at OAH in 2008, however, these cases are both before EAB as late applications for review. The applications for review in this case were due in December 2008, and were filed nearly 11 years later. The law is clear that the threshold question that must be answered before we have jurisdiction to try to redress the procedural flaws that occurred in 2008 is whether or not claimant has “good cause” for the late applications for review in this case. The record is clear that claimant does not.

Although claimant moved from Oregon in February 2009 and stopped receiving mail from the Department at that time, those events are not relevant to this case because the Hearing Decisions at issue

² EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). A copy of the information has been provided to the parties with this decision. Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

³ *See* Claimant’s application for review.

were mailed three months earlier in December 2008. In December 2008, and throughout the period of time in which the Hearing Decisions in these cases were being mailed, claimant was still living in Oregon, still claiming unemployment insurance benefits, and, therefore, still responsible for receiving and attending to mail from the Department. There is nothing in this record or claimant's late applications for review suggesting it was not within claimant's reasonable control in December 2008 – while still living in Oregon and receiving benefits – to file timely applications for review in both of these cases. Claimant therefore did not have good cause.

Even if we had concluded that claimant had good cause, the applications for review would still have to be dismissed because the filing deadline may only be extended a seven-day "reasonable time" period after whatever circumstances had prevented a timely filing ceased to exist. Although the applications for review stated that claimant "never receive[d]" information about these matters or the resulting garnishment after leaving Oregon in February 2009, claimant's application for review did not identify anything preventing claimant from filing applications for review between December 2008 and February 2009. Nor did the application identify what date claimant did first learn of these matters, and the record therefore does not establish that that occurred within seven days of the date claimant filed the late application for review on September 25, 2019. Nor, without evidence suggesting it, is it readily plausible that claimant received no indication of an outstanding debt owed to the Department or garnishment for a period of almost 11 years, such that the September 25th late application for review was filed within seven days of when claimant first learned of these matters.

Because claimant did not establish good cause or meet the seven-day "reasonable time" requirement, claimant's late applications for review must be dismissed. Hearing Decisions 08-UIB-071253-D and 08-UIB-18249, dismissing and re-dismissing claimant's late requests for hearing on decision # 73402 and the overpayment decision, remain undisturbed.

DECISION: The applications for review filed September 25, 2019 are dismissed. Hearing Decisions 08-UIB-071253-D and 08-UIB-18249 remain undisturbed.

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

DATE of Service: October 10, 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 Tỷ 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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