

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0819

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On April 17, 2019, the Oregon Employment Department (the Department) served two notices of two administrative decisions, one concluding claimant voluntarily left work without good cause (decision # 104845), and the other concluding claimant was not able to work or available for work beginning March 24, 2019 and until the reason for the denial had ended (decision # 110708). On April 20, 2019, claimant filed a timely request for hearing. The Department referred only decision # 104845 to the Office of Administrative Hearings (OAH) for a hearing.

On May 13, 2019, ALJ Snyder conducted a hearing on decision # 104845, and on May 20, 2019, issued Order No. 19-UI-130206, affirming decision # 104845. On May 29, 2019, claimant filed an application for review of Order No. 19-UI-130206 with the Employment Appeals Board (EAB). On July 2, 2019, EAB issued Appeals Board Decision 2019-EAB-0487, reversing Order No. 19-UI-130206 and concluding claimant was not disqualified from receiving benefits because of his work separation.

On July 14, 2019, claimant filed a second request for hearing that specifically referenced decision # 110708. Claimant's request was construed as a late request for hearing on that decision. On July 17, 2019, ALJ Kangas issued Order No. 19-UI-133517, dismissing claimant's late request for hearing on decision # 110708 subject to claimant's right to renew his request by responding to an appellant questionnaire by July 31, 2019. Claimant did not respond to the questionnaire until August 6, 2019, at which time claimant filed both a late questionnaire response and a timely application for review with EAB.

On August 15, 2019, ALJ Kangas mailed a letter stating that claimant's questionnaire was late and would not be considered. This matter is before EAB based upon claimant's timely application for review of Order No. 19-UI-133517.

EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence claimant's April 20, 2019 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.

FINDINGS OF FACT: (1) Decision # 110708 stated that claimant was denied benefits for the period beginning March 24, 2019. It also stated that claimant “must be physically and mentally capable of performing the type of work you are seeking” to be eligible for benefits, and that claimant was not because he was “performing self-employment from 6 AM to an undetermined time,” was “not willing to close the business,” and was “prescribed bed rest by your doctor and cannot perform the work of driver.”

(2) Claimant’s April 20, 2019 request for hearing included the subject line, “Appealing administrative decision.”¹ The request referenced a denial beginning March 24th and his back injury. The request stated, “I CAN STILL BE ABLE TO WORK AS A DRIVER.” (Emphasis in original.) It stated, that claimant “can still do some work with my back injury like driving a cab or working sitting down,” and that he is “not self employed.”

CONCLUSIONS AND REASONS: Claimant filed a timely request for hearing on decision # 110708. Claimant is entitled to a hearing on the merits of decision # 110708.

ORS 657.269(2) provides that a request for hearing must be filed within 20 days after an administrative decision is mailed. OAR 471-040-0005 states, “A Request for hearing may be filed on forms provided by the Employment Department or similar offices in other states. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed.”

Claimant’s April 20th request for hearing was not filed on a form. Although the request specifically expressed a present intent to appeal, as demonstrated by the subject line, the request did not specifically reference decision # 110708 or the other decision the Department had issued the same day. The Department determined that the issue or decision claimant wanted to appeal was only his work separation from the employer, and not decision # 110708, and referred only the work separation case to the Office of Administrative Hearings for a hearing.

The issue therefore is whether that determination was correct. A party’s submission may be construed as a request for hearing if it includes some indication that the party is aware the underlying decision exists and the party wants to challenge it. *See Kroetch v. Employment Department*, 289 Or. App. 291, 409 P.3d 60 (2017).

In this case, there is some indication that claimant was aware of the underlying decision at the time he requested a hearing on April 20th. The request for hearing stated that claimant was “appealing” the denial of benefits beginning March 24th, and decision # 110708 denied claimant benefits beginning March 24th. There is also an indication that claimant wanted to challenge decision # 110708, because he rebutted the specific findings set forth in decision # 110708 by stating that he was physically able to work and was not self-employed. The fact that the work separation was based upon the same issues and

¹ The source of all quoted materials is EAB Exhibit 1, claimant’s April 20, 2019 request for hearing.

also denied benefits beginning March 24th does not mean that claimant did not intend, by use of a single email appealing the decisions, to appeal both decisions.

Claimant's April 20th request for hearing was a timely and valid request for hearing on decision # 110708. It does not matter that his second request for hearing, filed July 14, 2019, was filed late, because claimant had already filed a timely and valid request for hearing and was entitled to a hearing on the basis of the April 20th filing.

DECISION: Order No. 19-UI-133517 is set aside, as outlined above. Claimant is entitled to a hearing on the merits of decision # 110708.

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

DATE of Service: September 3, 2019

NOTE: The failure of any party to appear at the merits hearing will not reinstate Order No. 19-UI-133517 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 desisyong ito.

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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