

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0886

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On May 31, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause, and was disqualified from receiving benefits effective March 24, 2019 (decision # 151332). On June 20, 2019, decision # 151332 became final without claimant having filed a timely request for hearing. On August 14, 2019, claimant filed a late request for hearing. On August 20, 2019, ALJ Kangas issued Order No. 19-UI-135289, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by September 3, 2019. On September 5, 2019, claimant returned a late response to the appellant questionnaire and filed a timely application for review of Order No. 19-UI-135289 with the Employment Appeals Board (EAB). On September 12, 2019, the Office of Administrative Hearings (OAH) mailed a letter stating that claimant's questionnaire response was late and would not be considered. This matter is before EAB on claimant's timely application for review of Order No. 19-UI-135289.

EVIDENTIARY RULINGS: EAB has considered additional evidence necessary to complete the record when reaching this decision. See OAR 471-041-0090(1) (May 13, 2019). The additional evidence includes: a copy of claimant's appellant questionnaire response, which has been marked as EAB Exhibit 1; a copy of claim records showing that claimant's most recently filed weekly claim for benefits occurred on May 9, 2019, which has been marked as EAB Exhibit 2; and a copy of claim comments showing claimant shared a telephone call with a Department employee on May 16, 2019, which has been marked as EAB Exhibit 3. Copies of EAB Exhibits 1, 2, and 3 have been marked and provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1, 2, and/or 3 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) On May 9, 2019, claimant last filed a weekly claim for unemployment insurance benefits for the week ending May 4, 2019 (week 18-19). EAB Exhibit 2. His claims for that week, and the previous week, were denied. *Id.* Thereafter, claimant did not file weekly claims for benefits.

(2) On May 16, 2019, claimant shared a telephone call with a Department employee.

(3) On May 31, 2019, the Department mailed notice of decision # 151332 to claimant's home address. Claimant was not living at his home address at the time because of a marriage separation. He did not change his address of record with the Department. He did not receive decision # 151332, and was unaware of that decision until June 3, 2019, the date claimant received notice of decision # 151332. *See* EAB Exhibit 1.

(4) Claimant filed a late request for hearing on August 14, 2019 because he had at some prior point in time received mail stating that there was an action against him, and he would need to repay unemployment benefits.

CONCLUSIONS AND REASONS: Claimant's late request 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(1)(a) and (b) (February 10, 2012) provide that "good cause" includes factors beyond an applicant's reasonable control or an excusable mistake, but does not include: "Failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal." OAR 471-040-0010(3) defines "[a] reasonable time" as seven days after the factors that prevented a timely filing ceased to exist.

Claimant did not show good cause, in part, because, according to the questionnaire, he received decision # 151332 on June 3, 2019, which was 17 days before the deadline for filing a timely request for hearing in this case expired. Claimant did not explain any circumstance that prevented him from filing a timely request for hearing within that 17-day period.

The information claimant provided on his questionnaire response about receiving decision # 151332 appears anomalous. The context of claimant's questionnaire response suggests that his response to that question might have been made in error, and that not only did he not received decision # 151332 on June 3, 2019, he might not have received decision # 151332 until after the period for filing a timely request for hearing had expired. Assuming that is the case, claimant still does not have good cause to extend the filing period in this case for the reasons that follow.

Claimant's questionnaire response and argument both stated that he did not receive decision # 151332 when it was mailed because he was not living at his home address due to a marriage separation. However, at the time decision # 151332 was mailed to claimant, he had just stopped claiming benefits three weeks before, he knew he had been denied benefits for at least two weeks, and he had been in communication with the Department as little as two weeks before. Claimant therefore knew or reasonably should have known that he had ongoing business with the Department related to his claim for benefits, and reasonably should have known that he might need to appeal the denials of benefits, and updated his address to ensure he continued to receive important mail about his claim from the Department despite no longer residing at his home address. Claimant therefore did not show good cause.

Even if claimant had shown good cause, he did not establish that the deadline may be extended to August 14, 2019. The deadline may only be extended, at most, “a reasonable time,” which is defined as seven days after the circumstances that prevented a timely filing ceased to exist. If claimant did in fact receive decision # 151332 on June 3, 2019, his August 14th late request for hearing was not filed within the seven-day reasonable time period allowed by law. Other than claimant’s probably mistaken statement that he received decision # 151332 on June 3, 2019, claimant did not provide any reliable information suggesting what date he actually learned that decision # 151332 existed. He therefore did not show that his August 14th late request for hearing was filed within seven days of any such date, and has not met the “reasonable time” requirement.

Claimant did not show good cause for the late request for hearing, nor did he establish that he filed his late request for hearing within a reasonable time. Claimant’s late request for hearing is, therefore, dismissed.

DECISION: Order No. 19-UI-135289 is affirmed.

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

DATE of Service: September 20, 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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