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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-0895

Requests to Reopen Allowed
Late Requests for Hearing Dismissed
Late Application for Review Allowed
Liable to Repay Overpayment

PROCEDURAL HISTORY: On March 4, 2019, the Oregon Employment Department (the Department) served four notices of four administrative decisions: one concluding that claimant was not physically capable of performing work from August 5, 2018 through February 16, 2019 and until the reason for the denial had ended (decision # 85418); one concluding that claimant was not available for work from September 9, 2018 to September 15, 2018 because she missed an opportunity to work (decision # 73440); one concluding that claimant was not available for work from September 16, 2018 to September 22, 2018 because she missed an opportunity to work (decision # 75327); and one concluding that claimant was only available for work with an employer every other Saturday and therefore was not available for work from December 9, 2018 through February 16, 2019 and until the reason for denial had ended (decision # 81737). On March 25, 2019, decisions # 85418, 73440, 75327, and 81737 became final without claimant having filed timely requests for hearing.

On May 31, 2019, the Department served notice of a fifth administrative decision, based upon decisions # 85418, 73440, 75327, and 81737, assessing a $16,224 overpayment claimant was liable to repay (decision # 130320). On June 19, 2019, claimant filed a timely request for hearing on decision # 130320 and late requests for hearing on decisions # 85418, 73440, 75327, and 81737. On July 1, 2019, the Office of Administrative Hearings (OAH) mailed notice of a consolidated hearing on decisions # 85418, 73440, 75327, and 81737 scheduled for July 16, 2019 at 9:30 a.m. On July 1, 2019, OAH also mailed notice of a separate hearing on decision # 130320 scheduled for July 16, 2019 at 10:45 a.m.

On July 1, 2019, claimant failed to appear for the 9:30 a.m. hearing because she had been told it was canceled, and appeared for the 10:45 a.m. hearing. On July 16, 2019, ALJ Snyder issued four orders dismissing claimant's requests for hearing for failure to appear: Order No. 19-UI-133400 dismissed claimant's request for hearing on decision # 85418; Order No. 19-UI-133401 dismissed claimant's request for hearing on decision # 73440; Order No. 19-UI-133403 dismissed claimant's request for hearing on decision # 75327; and Order No. 19-UI-133402 dismissed claimant's request for hearing on

decision # 81737. On July 19, 2019, ALJ Snyder issued Order No. 19-UI-133705, affirming decision # 130320.

On July 30, 2019, claimant filed with OAH timely requests to reopen the July 16, 2019 consolidated hearing. On August 7, 2019, OAH mailed notice of a consolidated hearing on claimant's requests to reopen the July 16, 2019 hearing scheduled for August 19, 2019 at 1:30 p.m. On August 8, 2019, claimant attempted to file a timely application for review of Order No. 19-UI-133705; OAH records indicate an attempt to forward the documents to the Employment Appeals Board (EAB) for review, but EAB did not receive the documents.[1]

On August 19, 2019, ALJ Snyder conducted a consolidated hearing, and on August 27, 2019 issued four orders: Order No. 19-UI-135700 allowed claimant's request to reopen and dismissed the late request for hearing on decision # 85418; Order No. 19-UI-135702 allowed claimant's request to reopen and dismissed the late request for hearing on decision # 73440; Order No. 19-UI-135703 allowed claimant's request to reopen and dismissed the late request for hearing on decision # 75327; and Order No. 19-UI-135704 allowed claimant's request to reopen and dismissed the late request for hearing on decision # 81737.

On September 16, 2019, claimant filed with EAB timely applications for review of Orders No. 19-UI-135100, 19-UI-135702, 19-UI-135703, and 19-UI-135704 with EAB, and a late application for review of Order No. 19-UI-133705. Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-135700, 19-UI-135702, 19-UI-135703, 19-UI-135704, and 19-UI-133705. For case-tracking purposes, this decision is being issued in quintuplicate (EAB Decisions 2019-EAB-0891, 2019-EAB-0892, 2019-EAB-0893, 2019-EAB-0894, and 2019-EAB-0895).

EAB considered claimant's arguments when reaching these decisions.

Late Application for Review. An application for review is timely if it is filed within 20 days of the date that OAH mailed the decision for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20 day filing period may be extended a "reasonable time" upon a showing of "good cause." ORS 657.875; OAR 471-041-0070(2). "Good cause" means that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A "reasonable time" is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

Claimant successfully filed an application for review of Order No. 19-UI-133705 with EAB on September 16, 2019. To be timely, that application for review had to have been filed no later than

[1] The application for review of Order No. 19-UI-133705 does not indicate how the document was filed or what date the document was received. The letter claimant included with the application for review form is dated August 7th, however, and claimant signed the application for review form on August 8th. There is nothing to suggest whether claimant filed the application for review timely on August 8th or untimely after that date; in the absence of evidence conclusively establishing that the application for review was late, however, we construed facts in the light most favorable to the filing party and conclude that the most probable date of filing was August 8th, making that filing timely. *See* OAR 471-041-0065(2) (where information establishing the method and date of filing is missing, "the filing date is the date that EAB determines to be the most probable date of filing").

August 8, 2019, making it late. However, the record shows that claimant had attempted to file a timely application for review in that case on August 8th, and for unknown reasons the document either was not provided to, or was not received by, EAB. The factors or circumstances that resulted in claimant's timely filed application for review not being received or processed by EAB were beyond claimant's reasonable control. Claimant therefore had good cause to extend the filing period. Claimant more likely than not also filed within a reasonable time, as there is nothing in the record suggesting that claimant was or has ever become aware that her original August 8th application for review of Order No. 19-UI-133705 was not received or processed by EAB at any point in time in these proceedings. Claimant's late application for review of Order No. 19-UI-133705 therefore is allowed.

Requests to Reopen. Based on a *de novo* review of the entire record in these cases, and pursuant to ORS 657.275(2), the portions of Orders No. 19-UI-135100, 19-UI-135702, 19-UI-135703, and 19-UI-135704 that concluded that claimant's requests to reopen should be allowed are **adopted.** Claimant showed good cause to reopen the July 16th 9:30 a.m. consolidated hearing in this case.

Late Requests for Hearing. Based on a *de novo* review of the entire record in these cases, and pursuant to ORS 657.275(2), the portions of Orders No. 19-UI-135100, 19-UI-135702, 19-UI-135703, and 19-UI-135704 that concluded claimant's late requests for hearing should be dismissed are also **adopted.**

Claimant asserted in her written argument and at the hearing that her requests for hearing should be allowed because she left a voicemail for the adjudicator in her case after receiving decisions # 85418, 73440, 75327, and 81737 explaining that she was confused and had some questions, and requesting that the adjudicator to call her back. However, decisions # 85418, 73440, 75327, and 81737 all stated on page 1 that the "Appeal Deadline Date" was March 25, 2019, and on page 2 stated, "You have the right to appeal this decision if you do not believe it is correct. You may return the attached for or contact us to request a hearing by telephone. Your request for appeal must be received no later than March 25, 2019." Nothing in decisions # 85418, 73440, 75327, and 81737 indicated that the deadline would be suspended or extended under any circumstances, or that if claimant wanted to ask the adjudicator questions she should wait to request a hearing, nor did claimant suggest that she received misleading information from the Department about whether, when, or how to file a request for hearing.

In sum, claimant did not identify any factors or circumstances that were beyond her control that prevented her from filing a timely request for hearing on decisions # 85418, 73440, 75327, and 81737. Although claimant's failure to file timely requests for hearing on those decisions was likely the result of claimant's mistaken belief that she should speak with the adjudicator instead of filing timely requests for hearing, the mistake 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. For those reasons, and the reasons explained in Orders No. 19-UI-135100, 19-UI-135702, 19-UI-135703, and 19-UI-135704, claimant's late requests for hearing on decisions # 85418, 73440, 75327, and 81737 must be dismissed.

Overpayment to be Repaid. Based on a *de novo* review of Order No. 19-UI-133705, and pursuant to ORS 657.275(2), Order No. 19-UI-133705 is **adopted**.

DECISION: Orders No. 19-UI-135100, 19-UI-135702, 19-UI-135703, 19-UI-135704, and 19-UI-133705 are affirmed.

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

DATE of Service: October 8, 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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