

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0909

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On May 15, 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 for benefits effective March 10, 2019 (decision # 92127). On June 4, 2019, decision # 92127 became final without claimant having filed a timely request for hearing. On July 29, 2019, the Department served notice of another administrative decision, based upon decision # 92127, concluding that claimant was overpaid \$1,313 that she was liable to repay (decision # 105944). On August 19, 2019, decision # 105944 became final without claimant having filed a timely request for hearing. On August 22, 2019, claimant filed late requests for hearing on decisions # 92127 and 105944.

On August 27, 2019, ALJ Kangas issued Order No. 19-UI-135651, dismissing claimant's late request for hearing on decision # 92127, and Order No. 19-UI-135679, dismissing claimant's late request for hearing on decision # 105944, both subject to claimant's right to renew the requests by responding to an appellant questionnaire by September 10, 2019. On September 16, 2019, claimant returned a late response to the appellant questionnaire and filed a timely applications for review of Order No. 19-UI-135651 and Order No. 19-UI-135679 with the Employment Appeals Board (EAB). On September 20, 2019, the Office of Administrative Hearings (OAH) mailed a letter stating that because claimant's questionnaire was late, it would not be considered. This matter is before EAB on claimant's timely applications for review of Order No. 19-UI-135651 and Order No. 19-UI-135679.

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-135651 and 19-UI-135679. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0909 and 2019-EAB-0910).

EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1)(a) (May 13, 2019) as necessary to complete the record. The additional evidence consists of claimant's late questionnaire responses, 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) Claimant did not receive notice of decision # 92127 when it was mailed to her, and was not aware of it at any time prior to the date it became final. Claimant received decision # 105944 on an unspecified date between July 29, 2019 and August 22, 2019.

(2) When claimant received decision # 105944, she first became aware that decisions # 92127 and 105944 existed. On August 22, 2019, which was an unknown number of days after she received decision # 105944 and became aware of decision # 92127, claimant filed late requests for hearing on both decisions.

CONCLUSIONS AND REASONS: Claimant's late requests 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 (February 10, 2012) defines "reasonable time" as seven days after the factors that prevented a timely filing ceased to exist.

In this case, claimant established that the circumstances that prevented her from filing a timely request for hearing on decision # 92127 ended when she received decision # 105944, but she did not explain or establish what date she received that decision. With respect to decision # 105944, claimant did not explain what circumstances prevented her from filing a timely request for hearing on that decision, and therefore also did not describe when those circumstances had ceased. Absent evidence establishing that August 22, 2019, which was the date claimant filed her late requests for hearing in these cases, occurred within seven days of the date the unspecified date(s) the circumstances that had prevented her from filing timely requests for hearing in each of these cases ceased to exist, claimant has not established that the late filings occurred within "a reasonable time" and her late requests for hearing must be dismissed.

DECISION: Orders No. 19-UI-135651 and 19-UI-135679 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 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.

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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