

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0951

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On July 24, 2019, the Oregon Employment Department (the Department) served, by mail, notice of an administrative decision concluding that claimant did not provide the Department information necessary to process his claim for benefits for the week of July 14 through 20, 2019, and that claimant therefore was denied benefits for that week and until he provided the information. Based on that decision, the Department also denied claimant benefits for two additional weeks, those from July 21 through August 3, 2019. On August 13, 2019, the July 24th administrative decision became final without claimant having filed a request for hearing. On August 19, 2019, claimant filed a late request for hearing. On August 22, 2019, ALJ Kangas issued Order No. 19-UI-135411, dismissing claimant's request for hearing as late without a showing of good cause to extend the filing deadline to August 19th, subject to claimant's right to renew the request by filing a response to an appellant questionnaire by September 5, 2019. On September 10, 2019, claimant filed a timely application for review of Order No. 19-UI-135411 with the Employment Appeals Board (EAB), which also was construed as a late response to the appellant questionnaire. On September 20, 2019, ALJ Kangas issued a letter stating that because claimant's response to the appellant questionnaire was late, it would not be considered, another order would not be issued, and Order No. 19-UI-135411 remained in effect. This decision is being issued based on claimant's timely application for review of Order No. 19-UI-135411 with EAB.

CONCLUSIONS AND REASONS: Order No. 19-UI-135411 is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing on the July 24th administrative decision should be allowed and, if so, the merits of that decision.

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) provides that "good cause" includes factors beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors ceased to exist.

In his late request for hearing on the July 24th administrative decision, claimant indicated that he was appealing three letters from the Department: one that denied his claimant for benefits for the week ending July 20, 2019; another, dated August 1, 2019, that denied his claim for benefits for the week ending July 27, 2019; and another, date August 13, 2019, that denied his claim for benefits for the week ending August 3, 2019.¹ As for why his request for hearing was late, claimant explained:

I missed a letter that was sent to me in July requesting more information about a job I have been working part time. When I realized something was wrong because two of my claims had been denied, I called and spoke to a lady who's name was Vee (not sure of spelling). We spoke on 8/8/18. I gave her the information about my job at Rudy's that was requested. She then told me that it would be sent to a review board and that things like this get resolved fairly quickly. I assumed that the payments would have been sent after the review, I didn't realize, and she didn't tell me, that I needed to file an appeal or I would have done it sooner than this.

On 8/16/19 I realized my most recent unemployment payment had gone through, but the other three that had been denied were still marked as denied, so I called again. I was told by the person I spoke to that I actually have to appeal the decisions for denial individually.²

Order No. 19-UI-135411 determined that claimant's statement did not include enough information to show that there was good cause for his late request for hearing, and that he filed his request no more than seven days after the circumstances that prevented him from making a timely hearing request ended.³ We agree with that determination. However, claimant's statement suggests that he may not have received the July 24th administrative decision in the mail, may not have been made aware of the decision from the three letters he received or during the conversation he had with a Department representative on August 8th, may have thought his case would be sent to a review board based upon his conversation with Vee, and/or may not have been made aware of the decision until August 16th. Claimant therefore may have filed his request for hearing on time, or filed it late due to factors beyond his reasonable control or an excusable mistake, and filed it within seven days after those factors ceased to exist. As a result, there may be good cause to extend the filing deadline to August 19th. However, further inquiry is required to make any determination in this case about claimant's request for hearing and whether it should be allowed. Order No. 19-UI-135411 therefore is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing on the July 24th administrative decision should be allowed and, if so, the merits of that decision.

DECISION: Order No. 19-UI-135411 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: October 9, 2019

¹ Exhibit 2 at 2.

² Exhibit 2 at 2.

³ Order No. 19-UI-135411 at 1.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-135411 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 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 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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