

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0976

Application for Review Dismissed

FINDINGS OF FACT AND PROCEDURAL HISTORY: On July 5, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from May 20, 2018 to June 9, 2018, and until the circumstances that caused his unavailability ceased to exist (decision # 111645). The Department mailed decision # 111645 to claimant at an address on Trade Street in Salem, Oregon. On July 25, 2019, decision # 111645 became final without claimant having filed a timely request for hearing.

On August 7, 2018, the Department served notice of another administrative decision, based upon decision # 111645, assessing a \$423.00 overpayment that claimant was required to repay (decision # 164433). The Department mailed decision # 164433 to claimant at an address on Trade Street in Salem, Oregon. On August 27, 2018, decision # 164433 became final without claimant having filed a timely request for hearing.

On September 13, 2018, claimant filed a late request for hearing on decisions # 111645 and 164433. Claimant's September 13, 2018 late request for hearing stated, "I also had to move out of my old place [] the same month as my vehicle broke down . . ." He did not provide a new address on his request. OAH mailed notice of Order No. 18-UI-116674 to claimant's "old place" address on Trade Street in Salem, Oregon.

On September 17, 2018, ALJ Kangas issued Order No. 18-UI-116674, dismissing claimant's late request for hearing on decision # 164433 subject to claimant's right to renew the request by responding to an appellant questionnaire by October 1, 2018. The Office of Administrative Hearings (OAH) mailed Order No. 18-UI-116674 to the Trade Street address in Salem, Oregon. On September 28, 2018, the U.S. Postal Service returned Order No. 18-UI-116674 to OAH with a label stating, "RETURN TO SENDER," "NOT DELIVERABLE AS ADDRESSED," "UNABLE TO FORWARD."

Claimant did not receive Order No. 18-UI-116674 and did not file a timely response to the appellant questionnaire. On October 8, 2018, Order No. 18-UI-116674 became final without claimant having filed a timely application for review with the Employment Appeals Board (EAB).

On August 16, 2019, claimant contacted the Office of Administrative Hearings (OAH) because he had not received a copy of Order No. 18-UI-116674 when it was mailed to him on September 17, 2018. On August 16, 2019, OAH mailed a copy of the order to claimant at the Portland, Oregon address he provided.¹

On September 30, 2019, claimant filed a late response to the appellant questionnaire with OAH and a late application for review of Order No. 18-UI-116674 by EAB. On October 7, 2019, OAH mailed a letter stating that claimant's late response to the appellant questionnaire would not be considered. On October 10, 2019, OAH referred claimant's late application for review to EAB. This matter is before EAB based upon claimant's September 30, 2019 late application for review.

CONCLUSIONS AND REASONS: The application for review is dismissed.

On September 30, 2019, the appellant filed an application for review of Order No. 18-IU-116674 with EAB. ORS 657.270(6) and ORS 657.270(7)(b) required the application for review to be filed no later than October 8, 2018. Claimant's application for review therefore was late.

ORS 657.875 provides that the deadline for filing a late application for review may be extended a reasonable time upon a showing of good cause. OAR 471-041-0070 provides:

(2) The filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875.

(a) "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing.

(b) "A reasonable time" is seven days after the circumstances that prevented timely filing ceased to exist.

(3) EAB shall dismiss a late application for review unless the applicant includes with the late application for review a written statement describing the circumstances that prevented a timely filing.

Claimant did not specifically identify the circumstances that prevented him from filing a timely application for review of Order No. 19-UI-116674 with EAB. We reasonably infer from the record and OAH's October 7th letter that the circumstance that prevented a timely filing was that he did not receive a copy of Order No. 19-UI-116674 in September 2018 because the U. S. Postal Service returned it to OAH. There is nothing on this record that suggests that the circumstances causing the order to be returned to sender were within claimant's reasonable control. Claimant therefore has shown good cause to extend the filing period.

¹ EAB has taken notice of the events of August 16th, information about which was contained in the October 7th letter OAH mailed to claimant. OAR 471-041-0090(1) (May 13, 2019). Because the letter was provided to claimant no additional copy is being mailed with the decision; if any party would like to receive another copy of the letter it will be made available to them upon request. Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

However, the filing period may only be extended a seven-day “reasonable time” after the circumstances that prevented a timely filing ceased to exist. The record and OAH’s October 7th letter establish that the circumstances that prevented a timely filing – claimant’s failure to receive the order – ended when OAH mailed a new copy of the order to claimant on August 16th, and the order was delivered to claimant in the mail, likely within 1-3 business days of August 16th.² The seven-day “reasonable time” period therefore likely expired before the end of August 2019. Claimant did not file his late application for review until September 30th, over a month later.

Although claimant established “good cause” to extend the filing deadline in this case, claimant has not satisfied the “reasonable time” requirement. Claimant’s late application for review must therefore be dismissed.

DECISION: The application for review filed September 30, 2019 is dismissed. Order No. 18-UI-116674 remains undisturbed.

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

DATE of Service: October 18, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

² First class mail sent through the U. S. Postal Service is customarily delivered within 1-3 business days. EAB has taken notice of this fact, which is a generally cognizable fact. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available to the parties at <https://www.usps.com/ship/mail-shipping-services.htm>. Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.



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 Tý 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.

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