

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0987

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On April 10, 2019, the Oregon Employment Department (the Department) served notice of an administrative assessing a \$328.00 overpayment that claimant was required to repay (decision # 193762). On April 30, 2019, decision # 193762 became final without claimant having filed a timely request for hearing. On August 28, 2019, claimant filed a late request for hearing. On September 3, 2019, ALJ Kangas issued Order No. 19-UI-136004, dismissing claimant's request for hearing as untimely without a showing of good cause, subject to claimant's right to renew his request by responding to an appellant questionnaire by September 17, 2019. On September 9, 2019, claimant filed a timely response to the appellant questionnaire. On September 18, 2019, the Office of Administrative Hearings (OAH) cancelled and vacated Order No. 19-UI-136004, and scheduled a hearing for September 30, 2019 on whether claimant's late request for hearing should be allowed. On September 30, 2019, ALJ Snyder conducted a hearing, and on October 8, 2019 issued Order No. 19-UI-137735, denying claimant's late request for hearing as untimely without good cause. On October 14, 2019, claimant filed an application for review of Order No. 19-UI-137735 with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision to the extent that it was relevant and based on the hearing record.

FINDINGS OF FACT: (1) On March 29, 2019, the Department served notice of an administrative decision concluding claimant was not available for work, decision # 162045.¹ On April 4, 2019, the Department served another administrative decision assessing an overpayment and penalties, decision # 194045.

(2) On April 10, 2019, the Department served notice of administrative decision # 193762, the decision at issue in this case. The decision provided instructions on how to file a request for hearing and stated that

¹ EAB has taken notice of the facts in this paragraph, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019).

to be timely any appeal from the decision had to be filed on or before April 30, 2019. Claimant received the decision on or about April 12, 2019.

(3) On April 12, 2019, claimant called the Department twice. During the calls, he discussed the overpayment decisions # 194045 and # 193762. Claimant filed timely request for hearings on both the March 29, 2019 decision (# 162045) and the April 4, 2019 decision (# 194045).²

(4) Based on claimant's conversation with a Department representative and because decision # 194045 assessed a larger overpayment than those assessed in decision # 193762, he decided to wait until decision # 194045 was resolved prior to requesting a hearing on decision # 193762, the decision at issue in this case. On June 21, 2019, EAB issued a final order on # 194045.³ After June 21, 2019, claimant "neglected to make contact again [with the Department]." Exhibit 1; Exhibit 2.

(5) Claimant forgot about decision # 193762 until August 23, 2019, when he received a letter from the Department with repayment information regarding the overpayment assessed in decision # 193762. Exhibit 1. Exhibit 2. On August 26, 2019, claimant spoke with a Department representative, who gave him information on how to file a late appeal.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 193762 is denied.

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 it is mailed. ORS 657.875 provides that the 20-day filing 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 or circumstances beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors or factors ceased to exist. Claimant did not establish good cause for the late requests for hearing, nor did he establish that he filed his late requests within a reasonable time of when those circumstances ceased to exist.

In his response to the appellant questionnaire, claimant asserts that after the April 4, 2019, overpayment decision was resolved, he neglected to contact the Department to address decision # 193762 because "I think it was partly to do with the added stress that the larger issue had added to my already busy day to day life and the relief I felt when it was finally over & also partly because I expected to be contacted again about the first issue upon resolving the second issue particularly because the course of action I took regarding the first issue was recommended to me by an unemployment representative." Exhibit 1. Claimant also stated that "... I completely forgot about the issue until I was contacted about payment of this money still owed back." Exhibit 1.

On this record, it is more like than not that claimant forgot to file a request for hearing on decision # 193762 prior to the filing deadline because he was absorbed and preoccupied addressing the April 4,

² EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019).

³ EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019).

2019 decision (# 194045). However, it was within claimant's reasonable control and not an excusable mistake for him to read the decision and file a request for hearing before the filing deadline passed, as he did with the two prior decisions. Claimant therefore did not establish good cause for filing a late request for hearing.

Claimant did not assert and the record does not show that a Department representative advised him to file a request for hearing on decision # 193762 after the filing deadline passed. However, assuming for the sake of argument that a Department representative told claimant to wait until the April 4, 2019 decision was resolved prior to filing a request for hearing on decision # 193762, claimant did not file his late request for hearing when he learned that that case was resolved. Instead, he waited almost two more months after learning it was resolved and only after receiving correspondence from the Department regarding payment of the overpayment assessed on decision # 193762. Claimant did not establish that his late request for hearing was filed within the seven day "reasonable time" period after the circumstances that prevented a timely filing ceased to exist. Because claimant did not file his late request for hearing within a reasonable time, the filing deadline cannot be extended.

Claimant's late request for hearing is therefore denied.

DECISION: Order No. 19-UI-137735 is affirmed.

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

DATE of Service: November 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 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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