

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1033

Order No. 19-UI-137826 Affirmed – Late Request for Hearing on Decision # 91913 Dismissed
Order No. 19-UI-137830 Reversed – Late Request for Hearing Allowed, Merits Hearing Required

PROCEDURAL HISTORY: On April 16, 2019, the Oregon Employment Department (the Department) served, by mail, notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 91913). On May 6, 2019, decision # 91913 became final without claimant having filed a request for hearing. On July 26, 2019, the Department served notice of an administrative decision based on decision # 91913, concluding that claimant was overpaid \$725 in benefits that she must repay the Department (decision # 141029). On August 15, 2019, decision # 141029 became final without claimant having filed a request for hearing.

On August 26, 2019, claimant filed late requests for hearing on decisions # 91913 and 141029. On September 3, 2019, ALJ Kangas issued Orders No. 19-UI-135978 and 19-UI-135981, dismissing claimant's late requests for hearing as untimely, subject to claimant's right to renew the requests by responding to appellant questionnaires by September 17, 2019. On September 13, 2019, claimant responded to the appellant questionnaires. The Office of Administrative Hearings (OAH) issued letters cancelling Orders No. 19-UI-135978 and 19-UI-135981, and scheduled hearings for October 8, 2019 on whether claimant's late requests for hearing should be allowed and, if so, the merits of decisions # 91913 and 141029. On October 8, 2019, ALJ Davis conducted hearings, and on October 9, 2019 issued Orders No. 19-UI-137826 and 19-UI-137830, re-dismissing claimant's late requests for hearing on decisions # 91913 and 141029. On October 28, 2019, claimant filed timely applications for review of Orders No. 19-UI-137826 and 19-UI-137830 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-137826 and 19-UI-137830. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-1033 and 2019-EAB-1032).

EAB considered both hearing records and claimant's written arguments to the extent they were relevant and based on the hearing record.

FINDINGS OF FACT: (1) On April 4, 2019, the Department issued a decision concluding that claimant had left work with Saws, LLC without good cause, and was disqualified from benefits. Claimant did not receive the decision, and the Department could not determine if it had mailed a copy to her.

(2) On April 16, 2019, claimant had two phone conversations with one or more Department employees. During one of the calls, the April 4th decision was discussed. The Department employee speaking with claimant told her that the Department would re-issue the decision with a new appeal date, and that the decision would be mailed to her.

(3) On April 17, 2019, the Department mailed claimant a letter stating that they had investigated whether or not she had made a misrepresentation and concluded she had not. The letter stated that claimant still might be overpaid, and if so, she could expect to receive a decision about that in the “near future.” Audio record at 16:00-16:45.

(4) Claimant mistakenly believed as a result of her April 16th calls and April 17th letter that her case was closed, and she would have no ongoing business with the Department. She received the April 16th decision and April 17th letter, but threw them away because she understood her case was closed. Audio record at 17:00-17:10.

(5) Claimant received the Department’s July 26th decision assessing an overpayment she was required to repay. During that time, claimant was mostly residing at her mother’s house providing care for her after a medical procedure. Claimant went to her own residence only infrequently, and did not sort through her mail. Claimant’s son, who resided at her residence, collected the mail. He culled out the cable bill and the electric bill so claimant could pay them, but stacked everything else on a chair as “junk” mail.

(6) Claimant cared for her mother from approximately June 1, 2019 through August 26, 2019. On August 26, 2019, claimant went through the pile of junk mail, found notice of decision # 141029, and contacted the Department to request hearings.

CONCLUSIONS AND REASONS: Order No. 19-UI-137826 is affirmed; claimant’s late request for hearing on decision # 91913 should be dismissed. Order No. 19-UI-137830 is reversed, and claimant is entitled to a hearing on the merits of decision # 141029.

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(1) (February 10, 2012) provides that “good cause” includes factors beyond an applicant’s reasonable control or an excusable mistake. “Good cause” does not include “[n]ot understanding the implications of a decision or notice when it is received.” OAR 471-040-0010(1)(b)(B). “A reasonable time” is seven days after those factors ceased to exist. OAR 471-040-0010(3).

Late request for hearing on decision # 91913 (the voluntary quit case). The preponderance of the evidence shows that claimant received notice of decision # 91913 when it was mailed to her on April 16th. Claimant received the decision and threw it away, operating under the mistaken belief that her case was resolved and she did not need to do anything with it. Claimant’s handling of decision # 91913

suggests that she threw it away, and therefore did not file a timely request for hearing on that decision, because she did not understand the implications of the decision when it was received. It is not good cause to file a late request for hearing because claimant did not understand the implications of the decision the Department mailed her and she received. Claimant therefore did not show good cause to extend the filing period for decision # 91913, and her late request for hearing is dismissed.

Late request for hearing on decision # 141029 (the overpayment). The preponderance of the evidence suggests claimant likely had good cause to extend the filing period on decision # 141029. Claimant last spoke with a Department employee on April 16th, and received a letter mailed April 17th advising her that she might receive an overpayment decision in the “near future.” The Department did not mail the overpayment decision to her until July 26th. July 26th was over three months later, which is not the “near future.”

When the Department mailed the July 26th decision to claimant, claimant had no reason to expect to receive mail from the Department, and no reason to carefully monitor her mail for letters from the Department. She was preoccupied at the time providing care for her mother who was recovering from surgery, and was not receiving her own mail. Had she expected mail from the Department, like the bills she knew she would need to pay, she likely would have had her son watch for mail from the Department and give it to her so she could attend to it in a timely manner. Because she was not expecting the mail, however, she did not.

While it was likely within claimant’s reasonable control to have monitored her mail and filed a timely request for hearing on decision # 141029, good cause is also defined to include an “excusable mistake.” It appears in this case claimant was likely prevented by an excusable mistake from filing a timely request for hearing; specifically, she was unable to comply with the Department’s rules for requesting a hearing because she was living away from her residence providing care for her mother, unable to check her mail until late August 2019, and unaware that she should be checking for time-sensitive mail from the Department. Claimant therefore established good cause to extend the filing period.

The circumstances that prevented claimant from filing a timely request for hearing on decision # 141029 ceased to exist between August 23rd and August 26th, when she learned of the existence of decision # 141029. She filed a request for hearing almost immediately, and within 7 days of the date she learned of the decision. Claimant therefore filed within a “reasonable time,” and is entitled to extend the period for filing a request for hearing on decision # 141029 to August 26th. Claimant’s late request for hearing on that decision is, therefore, allowed, and she is entitled to a hearing on the merits of decision # 141029.

Please note that the only issues that may be addressed at the hearing on decision # 141029 are whether or not claimant received the \$725 in benefits the Department paid to her and whether or not claimant can be required to repay the benefits. Whether or not claimant quit work, and whether the quit was with or without good cause, is not at issue, and will not be discussed at the hearing. That issue was determined in decision # 91913, and decision # 91913 is final as a matter of law.

DECISION: Order No. 19-UI-137826 is affirmed. Order No. 19-UI-137830 is set aside, as outlined above, and claimant is entitled to a hearing on the merits of decision # 141029.

With respect to review of Order No. 19-UI-137826:
J. S. Cromwell, D. P. Hettle, and S. Alba.

With respect to review of Order No. 19-UI-137830:
J. S. Cromwell and D. P. Hettle concurring;
S. Alba, not participating.

DATE of Service: December 3, 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 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 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

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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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