

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1076

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On January 3, 2019, claimant filed an initial claim for benefits. From January 3 through February 4, 2019, he filed weekly claims for benefits for the weeks from December 23, 2018 through February 2, 2019. On February 14, 2019, claimant filed an additional claim for benefits. From February 14 through 19, 2019, he filed weekly claims for benefits for the weeks from February 3 through 16, 2019. Claimant did not claim benefits after February 19, 2019.¹

On August 8, 2019, the Oregon Employment Department (the Department) served, by mail, notice of an administrative decision finding that claimant was affected by the partial federal government shutdown that took place from December 22, 2018 through January 25, 2019, and that he had received or would receive back pay compensation for his regularly scheduled work for the shutdown period (decision # 145917). Decision # 145917 concluded that claimant therefore was not unemployed from December 23, 2018 through January 26, 2019, and was overpaid the \$3,020 in benefits he received for that period. On August 28, 2019, decision # 145917 became final without claimant having filed a request for hearing.

On October 8, 2019, claimant filed a late request for hearing on decision # 145917. On October 15, 2019, ALJ Kangas issued Order No. 19-UI-138062, dismissing claimant's request for hearing as late without good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 29, 2019. On November 2, 2019, claimant filed a late response to the appellant questionnaire, and a timely application for review of Order No. 19-UI-138062 with the Employment Appeals Board (EAB). On November 12, 2019, ALJ Kangas issued a letter stating 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-138062 remained in effect.

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

This decision is being issued pursuant to claimant's timely application for review of Order No. 19-UI-138062. EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's response to the appellant questionnaire, 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.

CONCLUSIONS AND REASONS: Order No. 19-UI-138062 is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 145917 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 request for hearing and response to the appellant questionnaire, claimant asserted that he filed his request for hearing on decision # 145917 late due to being "busy" and "intermittently away" from his permanent residence because of his "occupation in public service," his job with the U.S. Forest Service in "Primary Fire." Exhibit 2, EAB Exhibit 1. In his response to the appellant questionnaire, claimant further asserted that "I have been busy fighting wildfires and doing fuels reduction projects," and that "getting home late & going to work early was a norm for me, so I did not get to check my mail as often due to my busy schedule." EAB Exhibit 1. According to claimant, he therefore did not personally receive decision # 145917 until October 4, 2019. EAB Exhibit 1.

Claimant further asserted that he filed a request for hearing on October 8, 2018 because, "I checked to see that my days of beign [sic] laid off where [sic] all corrected on my timesheets & that it reflected it so. Once I knew that my overpayment from the government was a mistake & that the funds mistakenly paid to me where [sic] returned, I decided to proceed with requesting a hearing." EAB Exhibit 1. Claimant also submitted a "Statement of Earnings and Leave," asserting that it showed that "I have been paying back the overpayment during the government shut down. I was laid off during this time period and was paid by mistake. Time sheet[s] have been corrected to reflect the previous submission. All overpayment funds have been paid off." EAB Exhibit 1.

Claimant's request for hearing and response to the appellant questionnaire suggest he may have filed his request for hearing on decision # 145917 late due to factors beyond his reasonable control or an excusable mistake, or a combination thereof, that he filed his late request for hearing within reasonable time, and that his request for hearing therefore should be allowed. However, further inquiry is needed into the facts necessary for a determination of those issues. For example, further inquiry is needed into whether the demands of claimant's job prevented him from checking his mail more often and filing a timely request for hearing and, if so, when that factor ceased to exist. Further inquiry also is needed into whether claimant knew or reasonably should have known that a decision from the Department on the issue addressed in decision # 145917, or other issues, was pending, such that he should have been more

diligent in checking his mail for correspondence from the Department almost six months after he had stopped claiming benefits.

Order No. 19-UI-138062 therefore is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 145917 should be allowed and, if so, the merits of that decision.

DECISION: Order No. 19-UI-138062 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: November 27, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-138062 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 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 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 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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