

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1097

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On May 3, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision that denied claimant benefits for the period of March 24 through April 20, 2019, concluding that claimant was not able to, and available for, work during that period (decision # 94636). On May 23, 2019, decision # 94636 became final without claimant having filed a request for hearing. On September 3, 2019, the Department served notice of a decision based on decision # 94636, concluding that claimant was overpaid \$992 in benefits for the period of March 24th through April 20th that he must repay (decision # 93838). On September 23, 2019, decision # 93838 became final without claimant having filed a request for hearing.

On October 8, 2019, claimant filed a late request for hearing on decision # 93838. On October 11, 2019, ALJ Kangas issued Order No. 19-UI-13726, dismissing claimant's request for hearing, subject to his right to renew the request by responding to an appellant questionnaire by October 25, 2019. On October 16, 2019, claimant responded to the appellant questionnaire, and filed a late request for hearing on decision # 94636. On October 17, 2019, the Office of Administrative Hearings (OAH) canceled Order No. 19-UI-13726, and on October 17, 2019 served notice of a hearing scheduled for October 31, 2019 on whether claimant's late request for hearing on decision # 93838 should be allowed and, if so, the merits of that decision. On October 22, 2019, OAH served notice of a hearing scheduled for November 5, 2019 at 1:30 p.m. on whether claimant's late request for hearing on decision # 94636 should be allowed and, if so, the merits of that decision. On October 22nd, OAH also served notice that the hearing regarding decision # 93838 was rescheduled for November 5, 2019 at 2:30 p.m.

On November 5th, ALJ Frank conducted the hearings, and on November 13, 2019 issued Orders No. 19-UI-139643 and 19-UI-139645, re-dismissing claimant's late requests for hearing on decisions # 94636 and 93838. On November 18, 2019, claimant filed an application for review of Orders No. 19-UI-139643 and 19-UI-139645 with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-139643 and 19-UI-139645. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-1140 and 2019-EAB-1097). EAB considered both hearing records in their entirety when reaching this decision.

FINDINGS OF FACT: (1) On May 3, 2019, the Department mailed decision # 94636 to claimant's home address in Portland, Oregon. Claimant was residing at home from May 3 to May 30, 2019 and personally collecting his mail during that time. Decision # 94636 was not returned to the Department as undeliverable.

(2) Claimant was away from his residence from May 30 to August 28, 2019.

(3) On September 3, 2019, the Department mailed decision # 93838 to claimant's home address. Claimant was residing at home and personally collecting his mail during the time decision # 93838 likely would have been delivered. Decision # 93838 was not returned to the Department as undeliverable.

CONCLUSIONS AND REASONS: Claimant's late requests for hearing on decisions # 94636 and 93838 are dismissed.

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.

At hearing, claimant asserted that he filed late requests for hearing on decisions # 94636 and 93838 because he did not receive the decisions in the mail. However, the Department mailed the decisions to claimant's home address, and neither decision was returned as undeliverable. There is a legal presumption that a letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(1)(q). Absent additional evidence, claimant's bare assertion that he did not receive the decisions fails to rebut that presumption. Claimant therefore failed to show that he did not receive the decisions, that it was beyond his reasonable control to file timely requests for hearing, or that his failure to do so was an excusable mistake.

Claimant failed to establish good cause to extend the deadlines for requesting hearings on decisions # 94636 and 93838. His late request for hearings therefore are dismissed.

DECISION: Orders No. 19-UI-139643 and 19-UI-139645 are affirmed.

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

DATE of Service: December 12, 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 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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