

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1126

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On July 12, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision that denied claimant benefits, concluding he quit working for the employer without good cause (decision # 104559). On July 31, 2019, the Department served notice of an administrative decision concluding that claimant willfully misrepresented the nature of his work separation from the employer to obtain benefits, and therefore was overpaid \$1,671 in benefits that he must repay, assessed a \$250.65 monetary penalty, and disqualified for 11 weeks of future benefits (decision # 194551). On August 1, 2019, decision # 104559 became final without claimant having filed a request for hearing. On August 20, 2019, decision # 194551 became final without claimant having filed a request for hearing.

On September 27, 2019, claimant filed a late request for hearing on decision # 194551 by telephone. On October 8, 2019, ALJ Kangas issued Order No. 19-UI-137699, dismissing claimant's late request for hearing, subject to his right to renew the request by responding to an appellant questionnaire by October 22, 2019. On October 15, 2019, claimant filed a timely response to the appellant questionnaire. On October 22, 2019, the Office of Administrative Hearings (OAH) cancelled Order No. 19-UI-137699 and served notice of a hearing scheduled for November 4, 2019 on whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 194551. On November 4, 2019, ALJ Wyatt conducted a hearing on whether claimant's late request for hearing should be allowed, and on November 12, 2019 issued Order No. 19-UI-139588, re-dismissing the request. On December 2, 2019, claimant filed a timely application for review of Order No. 19-UI-139588 with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the written argument claimant submitted with his application for review.

FINDINGS OF FACT: On July 31, 2019, the Department mailed decision # 194551 to claimant's address of record with the Department in Umatilla, Oregon. However, claimant did not receive the

decision. After last claiming benefits on June 18, 2019,¹ claimant had moved to his current residence in Coeur d'Alene, Idaho in late June 2019. Claimant did not obtain a P.O. Box in Coeur d'Alene until July or August 2019. He did not notify the Department that his mailing address had changed until September 27, 2019.

CONCLUSIONS AND REASON: Claimant's late application for review of decision # 194551 is 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.

Here, the deadline for filing a request for hearing on decision # 194551 was August 20, 2019. Claimant filed his request for hearing 38 days late on September 27, 2019. At hearing, claimant could not recall when he first became aware of decision # 194551. Audio Record at 22:15 to 22:50. Absent that information, claimant failed to show that he did not become aware of decision # 194551 in time to file a timely request for hearing, and that he filed his late request for hearing within seven days after he first became aware of the decision. Claimant therefore failed to establish good cause to extend the filing deadline to September 27th, and his request for hearing is dismissed.

Even if we inferred that claimant did not become aware of decision # 194551 in time to file a timely request for hearing, and that he filed his late request within seven days after he first became aware of the decision, the outcome of this decision would remain the same. If so, claimant filed his request for hearing late because he did not receive decision # 194551 in the mail. However, claimant did not receive the decision because, after moving from his address of record with the Department in Umatilla, Oregon to his current address in Coeur d'Alene, Idaho in late June 2019, he failed to obtain a P.O. Box and notify the Department that his mailing address had changed until September 27, 2019.

At hearing, claimant did not assert or show that factors or circumstances beyond his reasonable control prevented him from obtaining a P.O. Box and notifying the Department that his mailing address changed before the Department mailed decision # 194551 to him on July 31, 2019. And although claimant's failure to do so was a mistake, it was not an "excusable mistake" within the meaning of the administrative rules. Claimant had only recently stopped claiming benefits before moving, and his failure to obtain a P.O. Box and notify the Department that his mailing address had changed does not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Claimant's late request for hearing on decision # 194551 is dismissed.

¹ EAB has taken notice of this fact, which is contained in Employment 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.

DECISION: Order No. 19-UI-139588 is affirmed.

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

DATE of Service: January 3, 2020

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 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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