

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0002

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On August 12, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 72948). On September 3, 2019, decision # 72948 became final without claimant having filed a timely request for hearing. On August 21, 2019, the Department served notice of another administrative decision concluding claimant did not actively seek work during the week including July 28 through August 3, 2019 and was ineligible for benefits for that week (decision # 161245). On September 10, 2019, decision # 161245 became final without claimant having filed a timely request for hearing. On October 11, 2019, claimant filed late requests for hearing by email.

On October 15, 2019, ALJ Kangas issued Order No. 19-UI-138064, dismissing claimant's late request for hearing on decision # 72948, and Order No. 19-UI-138063, dismissing claimant's late request for hearing on decision # 161245, both subject to claimant's right to renew his requests by responding to appellant questionnaires by October 29, 2019. On November 5, 2019, claimant responded to the appellant questionnaires.

On November 8, 2019, the Office of Administrative Hearings (OAH) mailed letters stating that Order Nos. 19-UI-138064 and 19-UI-138063 were canceled.¹ On December 10, 2019, ALJ Frank conducted two hearings, and on December 13, 2019 issued Order No. 19-UI-141172, re-dismissing claimant's late request for hearing on decision # 72948, and Order No. 19-UI-141176, re-dismissing claimant's late request for hearing on decision # 161245. On January 2, 2020, claimant filed applications for review of both decisions with the Employment Appeals Board (EAB).

¹ It is unclear on what authority OAH canceled Order Nos. 19-UI-138064 and 19-UI-138063 on November 8, 2019 and served new notices of hearing on November 21, 2019. Claimant had neither responded to the appellant questionnaires by October 29, 2019 nor filed applications for review by November 4, 2019 as required by Order Nos. 19-UI-138064 and 19-UI-138063. On November 4, 2019, OAH jurisdiction over these cases had expired and there is nothing in the record explaining OAH's decision to consider the questionnaires after that date. Nonetheless, EAB has accepted review of Order Nos. 19-UI-141172 and 19-UI-141176.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 19-UI-141172 and 19-UI-141176. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0003 and 2020-EAB-0002, respectively).

FINDINGS OF FACT: (1) On August 12, 2019, the Department issued decision # 72948 concluding claimant voluntarily left work without good cause. The Department mailed that decision to claimant at claimant's address on file with the Department. Decision # 72948 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than September 3, 2019...If you do not understand this decision, contact the Unemployment Insurance Center above immediately." Claimant was having issues with the delivery and theft of his incoming mail. Claimant did not receive that decision.

(2) On August 20, 2019, claimant began a new job which was "very hectic." Audio Record (2019-UI-00940, 3:30 p.m. hearing) at 16:00 to 20:30.

(3) On August 21, 2019, the Department issued decision # 161245 concluding claimant did not actively seek work during the week including the week including July 28 through August 3, 2019 and was ineligible for benefits for that week. The Department mailed that decision to claimant at claimant's address on file with the Department. Decision # 161245 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than September 10, 2019...If you do not understand this decision, contact the Unemployment Insurance Center above immediately." Claimant was still having issues with the delivery and theft of his incoming mail, and did not receive that decision.

(4) On September 26, 2019, claimant contacted the Department to inquire about the status of his claim. The Department representative he spoke with notified claimant of decisions # 72948 and # 161245 and claimant's appeal rights regarding those decisions, including the filing deadlines for those appeals. Audio Record (2019-UI-00942, 4:30 p.m. hearing) at 11:30 to 11:45 and (2019-UI-00940, 3:30 p.m. hearing) at 14:00 to 15:00. Claimant responded that he had not received the written decisions and requested that they be resent. *Id.*

(5) On September 30, 2019, the Department mailed both decision to claimant at his last known address which had been verified by claimant as his actual address. DR Exhibit 2.

(6) On October 11, 2019, claimant filed his late requests for hearing on decisions # 72948 and # 161245 by email. DR Exhibit 2.

CONCLUSIONS AND REASONS: Claimant's late requests for hearing should be 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 it 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 this case, the deadline for claimant to file a timely request for hearing on decision # 72948 expired on September 3, 2019 and the deadline for claimant to file a timely request for hearing on decision # 161245 expired on September 10, 2019. Claimant did not file his requests for hearing on those two decisions until October 11, 2019, making those requests late.

The hearing record shows that on September 26, 2019, claimant was notified of the denying decisions # 72948 and # 161245 and of his appeal rights regarding those decisions. When asked at hearing why he then waited until October 11, 2019 to file his requests for hearing, claimant responded that he had started a new job on August 20, 2019, the job was “very hectic” and that without that job, he would have responded within a matter of days of September 26, 2019 with his requests for hearing. However, claimant failed to explain how the “hectic” nature of his new job prevented him from sending email requests for hearing more than seven days after becoming aware of his need to do so.

Claimant also explained at hearing that the delay was due to the “lag time” between his September 26 conversation with the Department representative and when he received the written denials after they were re-mailed, and his lack of understanding regarding how to file the requests. Audio Record (2019-UI-00940, 3:30 p.m. hearing) at 16:00 to 20:30. However, claimant had stated in his late requests for hearing that the Department re-mailed the denying decisions to him on September 30, 2019. DR Exhibit 2. First class domestic mail sent through the U.S. Postal Service is typically estimated to take only 1-3 days after mailing to be delivered.² On that basis, those written denials would have been received by claimant up to a week prior to the date he filed his late requests for hearing. Claimant failed to explain how that lag time and lack of understanding delayed the filing of those hearing requests until October 11, 2019, around a week after the written denials were likely received by claimant after having been re-mailed to him.

Therefore, even if we had concluded that factors or circumstances beyond claimant’s reasonable control or an excusable mistake prevented the timely filing of his requests for hearing regarding decisions # 72948 and 161245, claimant’s late hearing requests were not filed within the seven day “reasonable time” period under OAR 471-040-0010 after he became aware of those denying decisions. For these reasons, claimant’s late requests for hearing must be dismissed.

DECISION: Order Nos. 19-UI-141172 and 19-UI-141176 are affirmed.

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

DATE of Service: January 16, 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,

² We take notice of this generally cognizable fact. *See* <https://www.usps.com/ship/first-class-mail.htm>. Any party that objects to our doing so 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(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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

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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