

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0035

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On November 6, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for committing a disqualifying act, and therefore was denied benefits beginning September 29, 2019 (decision # 155425). On November 26, 2019, decision # 155425 became final without claimant having filed a request for hearing on that decision.

On December 12, 2019, claimant filed a late request for hearing on decision # 155425. On December 20, 2019, ALJ Kangas issued Order No. 19-UI-141528, dismissing claimant's request for hearing on decision # 155425, subject to her right to renew her request by responding to an appellant questionnaire by January 3, 2020. On January 6, 2020, claimant filed a late response to the appellant questionnaire, and a timely application for review of Order No. 19-UI-141528 with the Employment Appeals Board (EAB). On January 9, 2020, ALJ Kangas issued a letter stating that because claimant's response to the appellant questionnaire was late, it would not be considered, and Order No. 19-UI-141528 remained in effect. This case is before EAB for review based on claimant's timely application for review of Order No. 19-UI-141528.

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 EAB mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit will remain in the record.

CONCLUSIONS AND REASONS: Order No. 19-UI-141528 is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 155425 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 response to the appellant questionnaire, claimant indicated that her request for hearing was late because she did not receive decision # 155425 until December 10, 2019, and that she requested a hearing on December 12, 2019. EAB Exhibit 1 at 1. Claimant further explained that she did not receive decision # 155425 until December 10, 2019 because she did not have access to her mailbox until she was able to purchase a “replacement” mailbox key, she “had already borrowed money to pay other bills” and had to wait until she received a paycheck to purchase the mailbox key, and some of her mail was held at the post office because her mailbox became too full while she did not have a key to empty the mailbox. EAB Exhibit 1 at 2. Claimant also asserted that she did not know she would have the opportunity to appeal a Department administrative decision or that the appeal instructions would be included with a decision. EAB Exhibit 1 at 2.

Claimant’s response to the appellant questionnaire suggests that claimant may have filed her request for hearing late due to factors beyond her reasonable control or an excusable mistake, and that she filed a request for hearing within seven days after the circumstances that prevented a timely filing ceased to exist. Claimant therefore may have had good cause for filing her request for hearing late, and may have filed it within a reasonable time. However, further inquiry is needed to make that determination, including but not limited to whether claimant knew her benefits had been denied while she did not have access to her mailbox and had reason to expect to receive a Department mail requiring further action from her, and whether claimant knew or should have known about the hearing process if she were denied benefits. Further inquiry is also needed to determine when claimant lost her mail key and had money to purchase a new key, and whether claimant asked the post office if she could obtain her mail without having a mailbox key.

Order No. 19-UI-141528 therefore is reversed, and this matter remanded for a hearing on whether claimant’s late request for hearing on decision # 155425 should be allowed and, if so, the merits of that decision.

DECISION: Order No. 19-UI-141528 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: January 24, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-141528 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 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 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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