

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0036

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY AND FINDINGS OF FACT: On June 27, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from May 19, 2019 through June 22, 2019 and was ineligible for benefits for that period (decision # 160117). On July 17, 2019, decision # 160117 became final without claimant having filed a timely request for hearing. On November 6, 2019, the Department served notice of an administrative decision assessing a \$730 overpayment based on decision # 160117 (decision # 114005). On November 26, 2019, decision # 114005 became final without claimant having filed a timely request for hearing. On December 18, 2019, claimant changed his address of record with the Department. On December 19, 2019, claimant filed late requests for hearings on decisions # 160117 and # 114005.

On December 26, 2019, ALJ Kangas issued Order Nos. 19-UI-141735 and 19-UI-141742, dismissing claimant's late requests for hearings on decisions # 160117 and # 114005, subject to claimant's right to renew the requests by responding to an appellant questionnaire by January 9, 2020. On January 10, 2020, claimant filed a late response to the appellant questionnaire to the Office of Administrative Hearings (OAH) and timely applications for review of Order Nos. 19-UI-141735 and 19-UI-141742 with the Employment Appeals Board (EAB). On January 13, 2020, 2019, ALJ Kangas mailed a letter stating that claimant's questionnaire responses were late and would not be considered. On January 17, 2020, claimant submitted a legible copy of his appellant questionnaire to EAB. This matter is before EAB on claimant's timely applications for review of Order Nos. 19-UI-141735 and 19-UI-141742.

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-141735 and 19-UI-141742. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0036 and 2020-EAB-0037).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of the copy of claimant's response to the appellant questionnaire that he provided on January 17, 2020, and has been marked as EAB Exhibit 1. A copy is provided to the parties with this decision. Any party that objects to EAB

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 will remain in the record.

CONCLUSIONS AND REASONS: Claimant's late requests for hearings on decisions # 160117 and # 114005 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.

Claimant did not show in his responses to the appellant questionnaire that he had good cause to extend the deadlines to request hearings on decisions # 160117 and # 114005 until December 19, 2019. In his responses to the appellant questionnaire, claimant asserted that he filed a request for hearing on January 8, 2020 because he did not receive the decision in the mail before that date. EAB Exhibit 1. However, the record shows that claimant filed late requests for hearings on decisions # 160117 and # 114005 on December 19, 2019. Therefore, claimant's responses in his appellant questionnaire are apparently an explanation for why claimant filed his response to the appellant questionnaire late, and do not show why claimant filed late requests for hearings on decisions # 160117 or # 114005.

However, assuming that claimant filed late requests for hearings on decisions # 160117 and # 114005 because he did not receive the decisions in the mail or otherwise learn of the decisions until sometime shortly before December 19, 2019, EAB must still dismiss claimant's late requests for hearings on decisions # 160117 and # 114005. Department records indicate that on December 18, 2019, updated his address with the Department, and that contact with the Department suggests that claimant may not have become aware of decisions # 160117 and # 114005 until December 18 or 19, 2019. However, even assuming that claimant did not become aware of the decisions until that date, absent a showing that claimant's failure to update his address with the Department before December 18 was due to factors beyond his reasonable control or an excusable mistake, claimant failed to establish good cause to extend the filing deadlines to December 19, 2019.

Claimant's late requests for hearings on decisions # 160117 and # 114005 are dismissed.

DECISION: Order Nos. 19-UI-141735 and 19-UI-141742 are affirmed.

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

DATE of Service: January 29, 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 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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