

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0085

Affirmed
Late Requests for Hearing Dismissed

FINDINGS OF FACT AND PROCEDURAL HISTORY: On August 29, 2019, the Oregon Employment Department (the Department) served notice of three administrative decisions to claimant's address of record, one concluding that claimant was not able to work from July 21, 2019 through August 3, 2019 and until the reason for the denial ended (decision # 145957), one concluding that claimant did not actively seek work from July 21, 2019 through August 3, 2019 (decision # 145024), and the other concluding that claimant quit work without good cause from Home Care Workers and denying benefits beginning March 10, 2019 (decision # 151753).

On September 3, 2019, claimant contacted the Department by telephone in response to the August 29, 2019 administrative decisions and the Department representative explained claimant's appeal rights to her, and provided claimant with the email address to submit requests for hearing.¹ On September 18, 2019, decisions # 145957, 145024, and 151753 became final without claimant having filed a timely request for hearing.

On October 30, 2019, the Department served notice of a fourth administrative decision to claimant's address of record, concluding that claimant quit work without good cause from HR Service Group LLC and denying benefits beginning May 26, 2019 (decision # 101231). On November 19, 2019, decision # 101231 became final without claimant having filed a timely request for hearing.

On December 17, 2019, claimant filed late requests for hearing on decisions # 145957, 145024, 151753, and 101231. On December 23, 2019, ALJ Kangas issued Orders No. 19-UI-141649, 19-UI-141650, 19-UI-141652, and 19-UI-141651 dismissing claimant's late requests for hearings on decisions # 145957,

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). The Department note from the conversation states, "Clmt resp to decision ltrs, explain appeal rights, provide clmt with email addr to submit appeal request." 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 facts will remain in the record.

145024, 151753, and 101231, respectively. All four orders were issued subject to claimant's right to renew the requests by responding to an appellant questionnaire by January 6, 2020.

On January 9, 2020, claimant filed late responses to the appellant questionnaires with the Office of Administrative Hearings (OAH), and timely applications for review with the Employment Appeals Board (EAB). On January 27, 2020, ALJ Kangas issued letters stating that claimant's late questionnaire responses would not be considered. This matter is before EAB on claimant's timely applications for review of Orders No. 19-UI-141649, 19-UI-141650, 19-UI-141652, and 19-UI-141651.

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-141649, 19-UI-141650, 19-UI-141652, and 19-UI-141651. For case-tracking purposes, this decision is being issued in quadruplicate (EAB Decisions 2020-EAB-0083, 2020-EAB-0084, 2020-EAB-0085, and 2020-EAB-0087).

EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1). The additional evidence, claimant's late response to the appellant questionnaires, 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 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 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 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 stated in her appellant questionnaire that she "spoke with someone from the [Department] and he said he was going to set up a hearing on the phone." Claimant did not state the date of that conversation, and her assertion does not match the Department's record of the September 3, 2019 conversation showing that a representative told claimant about her appeal rights and gave claimant the email address to use to request hearings. It is more likely than not that, after having received information about appeal rights and being given the email address to use to request hearings, it was within claimant's reasonable control to request hearings. Claimant also asserted in her appellant questionnaire that she "left messages" with the Department and "didn't get any call back." Claimant's explanations for why she failed to file hearing requests in a timely manner do not show that requesting hearings was beyond her reasonable control. Nor was her failure to request a hearing due to an "excusable mistake" within the meaning of the administrative rules because they did not, for example, raise a due process issue, and were not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Claimant's late requests for hearing must therefore be dismissed. Decisions # 145957, 145024, 151753, and 101231 remain undisturbed.

DECISION: Orders No. 19-UI-141649, 19-UI-141650, 19-UI-141652, and 19-UI-141651 are affirmed.

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

DATE of Service: February 5, 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

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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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