

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0111

Application for Review Dismissed

FINDINGS OF FACT AND PROCEDURAL HISTORY: On August 28, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work and was ineligible for benefits from August 4 through August 10, 2019 (decision # 70257). On September 6, 2019, the Department served notice of an administrative decision concluding that claimant did not actively seek work and was ineligible for benefits from July 21 through August 3, 2019 (decision # 151640). On September 17, 2019, the Department served notice of an administrative decision concluding that claimant did not actively seek work and was ineligible for benefits from August 18 through August 31, 2019 (decision # 131551), and decision # 70257 became final without claimant having filed a request for hearing. On September 26, 2019, the Department served notice of an administrative decision concluding that claimant did not actively seek work and was ineligible for benefits from September 1 through September 21, 2019 (decision # 151518), and decision # 151640 became final without claimant having filed a request for hearing. On October 7, 2019, decision # 131551 became final without claimant having filed a request for hearing. On October 15, 2019, the Department served notice of an administrative decision concluding that claimant did not actively seek work and was ineligible for benefits from September 22 through October 5, 2019 (decision # 134610). On October 16 and November 4, 2019, decisions # 151518 and # 134610 became final, respectively, without claimant having filed a request for hearing.

On December 6, 2019, the Department served notice of an administrative decision, based in part on decision # 70257, assessing an overpayment of \$382 (decision # 125536).¹ On December 10, 2019, the Department served notice of an administrative decision, based on decision # 151640, assessing an overpayment of \$382 (decision # 80003). On December 11, 2019, the Department served notice of an administrative decision, based on decision # 131551, assessing an overpayment of \$382 (decision # 80651). On December 12, 2019, the Department served notice of an administrative decision, based on decision # 151518, assessing an overpayment of \$573 (decision # 73732). On December 26 and 30, 2019, decisions # 125536 and # 80003 became final, respectively, without claimant having filed a

¹ There is no apparent basis in OED records available to EAB to find that claimant was overpaid during week 33-19. Decision # 70257 pertains only to week 32-19.

request for hearing. On December 31, 2019 and January 2, 2020, decisions # 80651 and # 73732 became final, respectively, without claimant having filed a request for hearing.

On January 3, 2020, claimant filed a late request for hearing on decisions # 70257, # 151640, # 131551, # 151518, # 134610, # 125536, # 80003, # 80651, and # 73732. On January 15, 2020, ALJ Kangas of the Office of Administrative Hearings (OAH) issued Orders No. 20-UI-142655, 20-UI-142656, 20-UI-142657, 20-UI-142660, 20-UI-142661, 20-UI-142664, 20-UI-142663, 20-UI-142662, and 20-UI-142665 dismissing claimant's late requests for hearing subject to his right to renew the requests by responding to an appellant questionnaire by January 29, 2020. Orders No. 20-UI-142655, 20-UI-142656, 20-UI-142657, 20-UI-142660, 20-UI-142661, 20-UI-142664, 20-UI-142663, 20-UI-142662, and 20-UI-142665 also notified claimant of his option to request review of each order by filing an Application for Review with the Employment Appeals Board no later than February 4, 2020. On February 5, 2020, Orders No. 20-UI-142655, 20-UI-142656, 20-UI-142657, 20-UI-142660, 20-UI-142661, 20-UI-142664, 20-UI-142663, 20-UI-142662, and 20-UI-142665 became final without claimant having filed a questionnaire response or a timely application for review with the Employment Appeals Board (EAB). On February 5, 2020, claimant filed a late questionnaire response with OAH and a late application for review with EAB. On February 6, 2020, ALJ Kangas issued a letter stating that because claimant's response to the appellant questionnaire was filed late, it would not be considered, no other order would be issued, and Orders No. 20-UI-142655, 20-UI-142656, 20-UI-142657, 20-UI-142660, 20-UI-142661, 20-UI-142664, 20-UI-142663, 20-UI-142662, and 20-UI-142665 remained in effect. This matter is before EAB on claimant's late application for review of Orders No. 20-UI-142655, 20-UI-142656, 20-UI-142657, 20-UI-142660, 20-UI-142661, 20-UI-142664, 20-UI-142663, 20-UI-142662, and 20-UI-142665.

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 20-UI-142655, 20-UI-142656, 20-UI-142657, 20-UI-142660, 20-UI-142661, 20-UI-142664, 20-UI-142663, 20-UI-142662, and 20-UI-142665. For case-tracking purposes, this decision is being issued as nine corresponding decisions (EAB Decisions 2020-EAB-0111, 2020-EAB-0112, 2020-EAB-0113, 2020-EAB-0114, 2020-EAB-0115, 2020-EAB-0116, 2020-EAB-0117, 2020-EAB-0118, and 2020-EAB-0119).

CONCLUSIONS AND REASONS: Claimant's late application for review of Orders No. 20-UI-142655, 20-UI-142656, 20-UI-142657, 20-UI-142660, 20-UI-142661, 20-UI-142664, 20-UI-142663, 20-UI-142662, and 20-UI-142665 are dismissed.

On February 5, 2020, the appellant filed an application for review of Orders No. 20-UI-142655, 20-UI-142656, 20-UI-142657, 20-UI-142660, 20-UI-142661, 20-UI-142664, 20-UI-142663, 20-UI-142662, and 20-UI-142665 with EAB. ORS 657.270(6) and ORS 657.270(7)(b) required the application for review to be filed no later than February 4, 2020, as stated on each order. The deadline for filing a late application for review may be extended under certain circumstances. OAR 471-041-0070. In order to be considered for such an extension, an individual must include "a written statement describing the circumstances that prevented a timely filing." OAR 471-041-0070(3). With their application for review with EAB, claimant submitted a copy of the response to the appellant questionnaire. While it is unclear if claimant's response to the appellant questionnaire pertains to the late filing of the application for review with EAB or the late filing of the response with OAH, EAB has treated the response as an

explanation as to why they filed a late application for review. Claimant stated on the response, "I am late faxing this information because I am having difficulty understanding it."

Claimant did not establish good cause for the late filing in this case. The record shows OAH mailed claimant Orders No. 20-UI-142655, 20-UI-142656, 20-UI-142657, 20-UI-142660, 20-UI-142661, 20-UI-142664, 20-UI-142663, 20-UI-142662, and 20-UI-142665 on January 15, 2010 advising claimant of his right to request review of the dismissals, and included instructions for doing so. Given that claimant was provided with that information, it is more likely than not that filing a timely application for review pursuant to the information he was provided was within claimant's reasonable control. Even had claimant not understood the instructions, it was within his reasonable control to contact EAB for assistance before the deadline. Claimant's late application for review must therefore be dismissed.

DECISION: The application for review filed February 5, 2020 is dismissed. Orders No. 20-UI-142655, 20-UI-142656, 20-UI-142657, 20-UI-142660, 20-UI-142661, 20-UI-142664, 20-UI-142663, 20-UI-142662, and 20-UI-142665 remain undisturbed.

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

DATE of Service: February 20, 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 Tý Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn đã 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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