

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0148

Affirmed
Late Request for Hearing Dismissed
Overpayment, Monetary Penalty and 16 Penalty Weeks Assessed

PROCEDURAL HISTORY AND FINDINGS OF FACT: On July 25, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was overpaid \$1,192, assessing a monetary penalty of \$178.80, and increasing claimant's penalty weeks from 8 to 16 weeks of future benefits (decision # 200026). On August 14, 2019, decision # 200026 became final without claimant having filed a timely request for hearing. On January 22, 2020, claimant filed a late request for hearing. On February 3, 2020, ALJ Kangas issued Order No. 20-UI-143750, dismissing claimant's late request for hearing subject to claimant's right to renew the request by responding to an appellant questionnaire by February 17, 2020. On February 7, 2020, claimant filed a timely response to the questionnaire. ALJ Kangas reviewed claimant's response, and on February 13, 2020, issued Order No. 20-UI-144488, replacing Order No. 20-UI-143750, re-dismissing claimant's late request for hearing, and leaving decision # 200026 undisturbed. On February 19, 2020, claimant filed a timely application for review of Order No. 20-UI-144488 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant asserted in his response to the appellant questionnaire to the Office of Administrative Hearings and in his written argument to EAB that he did not request a hearing regarding decision # 200026 until January 22, 2020 because he did not claim benefits in July 2019 (when decision # 200026 was mailed to claimant), and had no knowledge of a "denial form." DR Exhibit 3. Decision # 200026 was issued in July 2019, but as stated on the decision, that decision is regarding benefits paid during weeks ending March 16, 2019 and April 20, 2019. DR Exhibit 1. As is also stated on the decision, the penalty weeks were increased based on a decision issued May 3, 2012. DR Exhibit 1. Although claimant apparently knew he disagreed with decision # 200026 when he received it, he did not request a timely hearing because he assumed it was regarding benefits claimed in July 2019.

The evidence in this record supports Order No. 20-UI-144488, which cited the language on decision # 200026 stating, "If you do not understand this decision, contact Investigations Unit immediately at 503-947-1980. SEE ENCLOSED FORM FOR APPEAL RIGHTS . . . To be timely, any appeal from [decision # 200026] must be filed on or before AUGUST 14, 2019." Order No. 20-UI-144488 at 3.

Claimant believed the decision was incorrect. It was within claimant's reasonable control to read the instructions on the decision and appeal the decision in a timely manner. If claimant did not understand any part of the decision, he was within his reasonable control to contact the Department for assistance. Moreover, not understanding the implications of a decision when it is received is not good cause to extend the deadline to request a hearing. OAR 471-040-0010(1)(b)(B) (February 10, 2012). For these reasons, claimant did not show that he had good cause to extend the deadline to request a hearing.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

DECISION: Order No. 20-UI-144488 is affirmed.

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

DATE of Service: February 26, 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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