

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0212

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On October 24, 2019, the Oregon Employment Department (the Department) served claimant notice of a Wage and Potential Benefit Report (WPBR) enumerating claimant's hours and earnings for each quarter of his base year and his weekly and maximum benefit amounts based thereon. On November 4, 2019, the WPBR became final without claimant having filed a timely request for hearing.

On December 18, 2019, claimant filed a late request for hearing. ALJ Kangas reviewed claimant's request for hearing, and on December 26, 2019, issued Order No. 19-UI-141760, dismissing claimant's request for hearing as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 9, 2020. On January 3, 2020, claimant filed a timely response to the appellant questionnaire.

On January 8, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 19-UI-141760 was vacated and a hearing would be scheduled to address the timeliness of claimant's hearing request and, if appropriate, the merits of the underlying administrative decision on appeal. On January 28, 2020, OAH mailed notice of a hearing scheduled for February 12, 2020.

On February 12, 2020, ALJ Wyatt conducted a hearing, and on February 14, 2020 issued Order No. 20-UI-144519, re-dismissing claimant's late request for hearing, leaving the Department's October 24, 2019 decision undisturbed. On March 5, 2020, claimant filed a timely application for review of Order No. 20-UI-144519 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant received the WPBR at his address on file with the Department shortly after it was mailed to him by the Department.

(2) The WPBR sent to claimant listed his hours and earnings for each quarter of his base year and the weekly and maximum benefit amounts established for his claim. The decision stated on page 1, "Please the check the information on this form. If anything is incorrect or missing, call your unemployment insurance center at (541) 388-6207." The decision stated on page 2, "THIS REPORT BECOMES

FINAL UNLESS YOU REQUEST REDETERMINATION OF THE REPORT OR REQUEST A HEARING WITHIN 10 DAYS.” DR Exhibits 1 and 2. Claimant read the WPBR but took no action.

(3) Claimant did not request a hearing on the WPBR until December 18, 2019, when he had a phone call with a Department employee about the decision.

CONCLUSIONS AND REASONS: Claimant did not have good cause for his late request for hearing on the WPBR, and his late request for hearing is dismissed.

ORS 657.266 provides that the Department’s Wage and Potential Benefits Reports become final unless a party files a request for hearing within 10 days after the date the report is mailed. ORS 657.875 allows the deadline to be extended a “reasonable time” upon a showing of “good cause.” OAR 471-040-0010 (February 10, 2012) defines a “reasonable time” as seven days from the date the circumstances that prevented a timely filing ceased to exist, and “good cause” as an excusable mistake or factors beyond an applicant’s reasonable control.” OAR 471-040-0010(1)(b)(B) specifically states, “Good cause does not include: Not understanding the implications of a decision or notice when it is received.”

Here, claimant admitted that he read the report, including its advisory that it would become final unless he requested a hearing or redetermination within 10 days, but failed to show that it was beyond his reasonable control to understand that if he disagreed with the report, he needed to request a hearing by November 4, 2019 or it would become final. Transcript at 11. To any extent he did not understand the WPBR or its implications, good cause does not include not understanding the implications of a decision when it is received. Although claimant’s failure to file a timely request for hearing might have been a mistake, it was not an “excusable mistake” within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Claimant failed to establish good cause for filing a late request for hearing on the WPBR. The late request for hearing is, therefore, dismissed.

DECISION: Order No. 20-UI-144519 is affirmed.

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

DATE of Service: March 31, 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 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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