

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0232

Affirmed
Ineligible Weeks 18-19 through 45-19

PROCEDURAL HISTORY: On November 20, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not able to work and therefore ineligible for unemployment insurance benefits from April 28, 2019 through November 9, 2019 (decision # 95522), and a second administrative decision concluding that claimant was not available for work and therefore ineligible for benefits from October 20, 2019 through November 2, 2019 (decision # 115954). On December 10, 2019, decisions # 95522 and # 115954 became final without claimant having filed a request for hearing on either decision.

On December 30, 2019, the Department served notice of an administrative decision based on decisions # 95522 and # 115954, concluding that claimant was overpaid \$10,348 (decision # 105204). On January 7, 2020, claimant filed a timely request for hearing on decision # 105204¹ and late requests for hearing on decisions # 95522 and # 115954. On January 23, 2020, ALJ Kangas issued Orders No. 20-UI-143164 and No. 20-UI-143221, dismissing claimant's late requests for hearing on decisions # 95522 and # 115954, subject to claimant's right to renew the requests by responding to an appellant questionnaire by February 6, 2020. On January 29, 2020, claimant submitted a timely response to the appellant questionnaire to the Office of Administrative Hearings (OAH). On February 6, 2020, OAH issued a letter vacating Order No. 20-UI-143221.² On February 18, 2020, OAH sent notice of a hearing on March 3, 2020 on whether claimant had good cause for the late requests for hearing on decisions # 95522 and # 115954, and if good cause was shown, the merits of the underlying decisions. On March 3, 2020, ALJ Murdock conducted a hearing, and on March 10, 2020 issued Orders No. 20-UI-145942 and No. 20-UI-145943 concluding that claimant did not show good cause for the late requests on decisions # 95522 and # 115954, and re-dismissing claimant's late requests for hearing on those decisions. On March 14, 2020,

¹ Claimant's late request for hearing on decisions # 95522 and #115954 appears to have also been a timely request for hearing on the overpayment decision (decision # 105204), and OAH should address claimant's request for hearing on decision # 105204 if it has not already done so.

² There is no similar letter in the record regarding Order No. 20-UI-143164. It is not clear under what authority OAH issued Order No. 20-UI-145942.

claimant filed timely applications for review of Orders No. 20-UI-145942 and No. 20-UI-145943 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-145942 and No. 20-UI-145943. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0232 and 2020-EAB-0231).

FINDINGS OF FACT: (1) On October 29, 2019, the Department mailed claimant a letter inquiring about his availability for work due to a brief incarceration. On November 1, 2019, claimant responded to the Department's letter of inquiry with additional information. On November 14, 2019, claimant provided additional information to the Department by telephone.

(2) On November 16, 2019, claimant stopped claiming benefits when he had exhausted all the funds available on his unemployment insurance benefit claim.

(3) Decisions # 95522 and # 115954, mailed to claimant on November 20, 2019, were not returned to the Department in the mail.

(4) The Department had no record of any contact from claimant from November 20, 2019 until it received the request for hearing claimant mailed on January 7, 2020.

CONCLUSIONS AND REASONS: Claimant's late requests for hearing 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.

The deadline for filing a timely request for hearing on the November 20 decisions, decisions # 95522 and # 115954, was December 10 2019. The Department's evidence shows that claimant did not contact the Department after it sent him decisions # 95522 and # 115954 until he filed a late request for hearing on January 7, 2020. However, claimant asserted at hearing that he sent an "appeal" at the end of November 2019. Transcript at 10. When the ALJ asked claimant what he did when he received the November 20 decisions, claimant replied as follows:

I replied with an appeal letter, and it was within two weeks after I got it. *
* * I wrote a letter and sent it in about a week after I got it in the mail, and then [the Department] - I returned another thing, saying that they hadn't got anything with me, and so I sent in the letter again and then after that they started the hearing and all this paperwork.

Transcript at 10. However, claimant provided conflicting testimony by agreeing that he responded to "letters of inquiry" from the Department, and did not appeal until *after* he received the December 30,

2019 overpayment decision (decision # 105204). Transcript at 16-17. Also during the hearing, claimant reviewed his documents and testified as follows:

I mean I - what I'm looking at is that I - you know, I had received three Administrative Decisions, on 11/20, 11 - two on 11/20 and then one on 12/30, and then I see that I wrote my appeal letter seven days after supposed overpayment date. I - and that's pretty much all I can find.

Transcript at 19. Claimant's conflicting testimony makes his testimony that he appealed the November 20 decisions at the end of November less persuasive than the Department's information that claimant replied to requests for information before November 20, but did not appeal any of the decisions until January 7, 2020.

Moreover, claimant's January 7 request for hearing and his responses to the appellant questionnaire do not contain information showing that claimant appealed the November 20 decisions before January 7, which is inconsistent with claimant's testimony that he appealed the November 20 decisions on time. Had claimant appealed the decisions on time, he presumably would have asserted as such in his January request for hearing and his responses to the questionnaire.

Claimant did not present other evidence to show that factors beyond his reasonable control or an excusable mistake caused him to file a late request for hearing. Claimant therefore failed to establish good cause to extend the filing deadline for decisions # 95522 and # 115954 to January 7, 2020, and his requests for hearing on decisions # 95522 and # 115954 are dismissed.

DECISION: Orders No. 20-UI-145942 and No. 20-UI-145943 are affirmed.

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

DATE of Service: April 2, 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 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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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