

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0251

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On October 11, 2019, the Oregon Employment Department (the Department) served notice by mail of an administrative decision concluding that claimant willfully underreported earnings from the employer, and therefore was overpaid \$624 in unemployment insurance benefits, was required to repay that amount to the Department, was disqualified for four weeks of future benefits, and was assessed a \$93.60 monetary penalty (decision # 194069). The decision stated that any appeal from the decision must be filed by October 31, 2019 to be timely. On October 31, 2019, decision # 194069 became final without claimant having filed a request for hearing.

On January 23, 2020, claimant filed a late request for hearing on decision # 194069. On February 3, 2020, ALJ Kangas issued Order No. 20-UI-143786, dismissing claimant's request for hearing as late without a showing of good cause, subject to claimant's right to renew her request by filing a response to an appellant questionnaire by February 17, 2020. On February 24, 2020, claimant filed a late response to the appellant questionnaire, and a timely application for review of Order No. 20-UI-143786 with the Employment Appeals Board (EAB). On February 26, 2020, ALJ Kangas issued a letter stating because claimant's response to the appellant questionnaire was late, it would not be considered, another order would not be issued, and Order No. 20-UI-143786 remained in effect.

This decision is being issued pursuant to claimant's timely application for review of Order No. 20-UI-143786. EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's request for hearing, which has been marked as EAB Exhibit 1, and claimant's response to the appellant questionnaire, which has been marked as EAB Exhibit 2. A copy of each exhibit has been provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1 and 2 must submit such objection to this office in writing, setting forth the basis of the objection, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibits will remain in the record.

CONCLUSIONS AND REASONS: Order No. 20-UI-143786 is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 194069 should be allowed and, if so, the merits of that decision.

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.

In her response to the appellant questionnaire, claimant asserted that she did not receive the "first notice." EAB Exhibit 2 at 1. Based on this assertion, the record shows that claimant may not have received decision # 194069. Claimant also asserted in her request for hearing and her response to the appellant questionnaire that she received the "second notice," contacted the Department by telephone twice about the "fraud," and "both times . . . asked for a hearing." EAB Exhibit 2 at 2. Claimant also asserted that during the telephone calls, the Department gave her fax numbers that she gave to the employer, and the employer "faxed the information to [the Department] before the deadline." EAB Exhibit 1. Claimant also asserted that one of the fax numbers was "not a good one." EAB Exhibit 2 at 2.

Claimant's request for hearing and response to the appellant questionnaire suggest she may have filed her request for hearing on decision # 194069 on time by telephone. In the alternative, the record shows claimant may have filed the request late due to factors beyond her reasonable control or an excusable mistake, or a combination thereof, that she filed her late request for hearing within a reasonable time, and that her request for hearing therefore should be allowed. However, further inquiry is needed into the facts necessary for a determination of those issues. For example, further inquiry is needed into which "notice" claimant referred to when she referred to the "first notice" and the "second notice." Further inquiry is needed to determine if claimant had been having problems with receiving her mail. Further inquiry is needed into the dates and content of the telephone conversations claimant had with the Department and whether claimant requested a hearing during those calls.

Order No. 20-UI-143786 therefore is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 194069 should be allowed and, if so, the merits of that decision.

DECISION: Order No. 20-UI-143786 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 31, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 143786 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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

ទោរទោស – តម្រូវការនេះមិនមែនជាភារកិច្ចរបស់រដ្ឋនោះទេ បើសិនជាលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

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.

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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.