

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0299

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On November 25, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not file his claim for benefits for the week of November 3 through 9, 2019 (week 45-19) in accordance with Department rules and therefore was denied benefits for that week and until claimant provided the information. On November 25, 2019, the Department also served notice of an administrative decision concluding claimant was not available for work during week 45-19 and was therefore ineligible for benefits for that week. On December 16, 2019, the November 25, 2019 decisions became final without claimant having filed a timely request for hearing.

On February 19, 2020, claimant filed a late request for hearing on the November 25, 2019 decisions. On March 2, 2020, ALJ Kangas issued Order No. 20-UI-145446 dismissing claimant's late request for hearing on the decision denying him benefits for failing to file his claim in accordance with Department rules, subject to claimant's right to renew the request for hearing by responding to an appellant questionnaire by March 16, 2020. On March 2, 2020, ALJ Kangas also issued Order No. 20-UI-145445 dismissing claimant's late request for hearing on the decision concluding that claimant was not available for work during week 45-19 and was therefore ineligible for benefits for that week, subject to his right to renew the request for hearing by responding to an appellant questionnaire by March 16, 2020.

On March 18, 2020, claimant filed a late response to each appellant questionnaire with the Office of Administrative Hearings (OAH) and a timely application for review of Order Nos. 20-UI-145446 and 20-UI-145445 with the Employment Appeals Board (EAB). ALJ Kangas reviewed claimant's questionnaire response regarding the decision denying him benefits for failing to file his claim in accordance with Department rules, and on April 9, 2020 mailed a letter stating that because claimant's response to the questionnaire was late, it would not be considered, leaving Order No. 20-UI-145446 in effect. ALJ Kangas also reviewed claimant's questionnaire response regarding the decision concluding that claimant was not available for work during week 45-19 and was therefore ineligible for benefits for that week, and on April 13, 2020 mailed a letter stating that because claimant's response to the questionnaire was late, it would not be considered, leaving Order No. 20-UI-145445 in effect. These

matters are before EAB based on claimant's March 18, 2020 timely applications for review of Order Nos. 20-UI-145446 and 20-UI-145445.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders Nos. 20-UI-145446 and 20-UI-145445. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0298 and 2020-EAB-0299, respectively).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching these decisions under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's response to the appellant questionnaire, which has been marked as EAB Exhibit 1, and Department records of telephone conversations with claimant on February 4, 7, and 18, 2020, which has been marked as EAB Exhibit 2, and copies provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 and/or 2 into the record must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

FINDINGS OF FACT: (1) On November 25, 2019, the Department mailed notice of two administrative decisions to claimant at his address of record on file with the Department. One decision denied claimant benefits for the week of November 3 through 9, 2019 (week 45-19) and continuing until claimant provided the information concerning a work separation. Exhibit 1. The other decision concluded claimant was ineligible for benefits for week 45-19 because he was not available for work that week. Claimant received the administrative decisions at his address of record shortly after they were mailed.

(2) On January 21, 2020, claimant claimed benefits for the week of January 12 through 18, 2020 (week 03-20), and was denied based on the November 25th administrative decision which denied claimant benefits until he provided the information concerning a work separation.¹ On January 30, 2020, claimant spoke with a Department representative about his claim and "was told" that he was "denied" benefits. EAB Exhibit 1.

(3) On February 4, 2020, claimant spoke with a Department employee about his claim for benefits for week 03-20, and the Department employee advised claimant of the "appeal process" regarding the continuing denial of his claim for week 45-19. EAB Exhibit 2. On February 7, 2020, claimant again spoke with a Department employee about his claim for week 03-20, and again was given information on how to appeal. EAB Exhibit 2. On February 18, 2020, claimant contacted the Department again regarding his claim for week 03-20, and confirmed that he had information on how to "request a hearing." EAB Exhibit 2.

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

¹ EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

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 it is mailed. The deadline for claimant to file a timely request for hearing on the administrative decisions in this case was December 16, 2019. Claimant did not file his requests for hearing until February 19, 2020. His requests for hearing were 34 days late.

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. Good cause does not include not understanding the implications of a decision or notice when it is received. OAR 471-040-0010(1)(b)(B). OAR 471-040-0010 defines a "reasonable time" as seven days after the factors or circumstances that prevented timely filing ceased to exist.

Claimant did not show good cause for his late requests for hearing. Claimant knew he had claimed benefits in November 2019 and never denied receiving the November 25, 2019 claim denials at his address of record. Moreover, documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary. OAR 137-003-0520 (10) (January 31, 2012). Because claimant did not offer any contrary evidence, a factual finding that claimant received the administrative decisions at his address of record shortly after they were mailed has been made.

In his response to the appellant questionnaire, claimant asserted "Jan 30th is when I was told I was denied," and Department records show that on February 4, 2020, claimant likely was informed that he had not received benefits for his January claim because of the continuing denial of benefits described in one of the November 25, 2019 administrative decisions. From those facts, we infer that claimant did not file his requests for hearing before the December 16, 2019 deadlines because he did not understand that one of the denials was a continuing denial that made him ineligible for benefits until he provided the requested information, or the decision was overturned. Because good cause does not include not understanding the implications of a decision or notice when it is received, claimant did not establish good cause for his late requests for hearing.

Even if claimant had demonstrated good cause for not filing requests for hearing by the December 16, 2019 deadlines, he failed to show that he filed them within a reasonable time. The record shows that the claimant was aware of both the week 45-19 denial and the "appeal process" for that denial no later than February 4, 2020. Claimant did not file his hearing requests until February 19, 2020, which was more than seven days after the factors or circumstances that prevented the timely filing of his requests for hearing ceased to exist.

Claimant did not establish good cause for his late requests for hearing, and the hearing requests are therefore dismissed.

DECISION: Order Nos. 20-UI-145445 and 20-UI-145446 are affirmed.

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

DATE of Service: April 22, 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

ទោរទៅ – តម្រូវការនេះមិនមែនជាភារកិច្ចរបស់រដ្ឋទេ ប៉ុន្តែវាជាភារកិច្ចរបស់អ្នកប្រើប្រាស់។ បើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ 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 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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