

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0302

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On September 14, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$1,358 overpayment and \$407.40 monetary penalty that claimant was required to repay, and 10 penalty weeks (decision # 194508). On October 4, 2017, decision # 194508 became final without claimant having filed a timely request for hearing.

On March 20, 2020, claimant filed a late request for hearing. On March 25, 2020, ALJ Kangas issued Order No. 20-UI-146877, dismissing claimant's late request for hearing subject to her right to renew the request by responding to an appellant questionnaire by April 8, 2020. On March 31, 2020, claimant filed a timely response to the appellant questionnaire. On April 9, 2020, ALJ Kangas issued Order No. 20-UI-147804, concluding claimant did not show good cause for the late request for hearing, canceling Order No. 20-UI-146877, re-dismissing claimant's request for hearing, and leaving decision # 194508 undisturbed. On April 13, 2020, claimant filed a timely application for review of Order No. 20-UI-147804 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On September 18, 2017, claimant received administrative decision # 194508. Exhibit 3.

(2) Decision # 194508 stated that claimant was disqualified for 10 weeks of future benefits and that, to be given credit toward this penalty, claimant must claim weeks for which claimant would have otherwise received payment. Decision # 194508 also stated that a request for hearing must be filed on or before October 4, 2017 to be timely. Exhibit 1.

(3) Between September 18 and October 4, 2017, claimant attended job interviews and was working part time. DR Exhibit 3. On September 28, 2017, claimant began working a second part-time job. DR Exhibit 3. Claimant felt she was unable to take time off work to attend a hearing without "running the risk" of losing her job. Exhibit 3.

CONCLUSIONS AND REASONS: Claimant's late request for hearing must be 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 request for hearing regarding decision # 194508 was due October 4, 2017. Because the appellant did not request a hearing until March 20, 2020, her request for hearing was late. Decision # 194508 specifically assessed the 10 penalty weeks, and stated that claimant was disqualified for 10 weeks of future benefits and that to be given credit toward this penalty, claimant must claim weeks for which claimant would have otherwise received payment. Claimant was, therefore, on notice of this penalty imposed by decision # 194508.

Claimant asserted that she was working and had job interviews which prevented her from submitting a timely request for hearing. However, the record does not show that such time commitments were factors beyond claimant's reasonable control that would have prevented claimant from requesting a hearing by October 4, 2017. The record does not show that claimant was prevented from requesting a hearing at a time when she was not working or engaged in interviews during the 17 days from September 18 through October 4, 2017. Claimant also asserted that she was not able to take time to attend a hearing without "running the risk" of losing her job. The record does not show that claimant requested and was denied time off work. Nor is the record otherwise persuasive that claimant's concern about losing her job was a factor beyond her reasonable control that prevented her from requesting a hearing until March 20, 2020.

Accordingly, claimant did not show good cause for the late request for hearing, and her late request for hearing is dismissed.

DECISION: Order No. 20-UI-147804 is 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 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

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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