

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0345

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On March 25, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective December 23, 2018 (decision # 92324). On April 15, 2019, decision # 92324 became final without claimant having filed a request for hearing.

On October 23, 2019, the Department served notice of an administrative decision, based on decision # 92324, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing eight penalty weeks of disqualification from future benefits (decision # 194452). On November 12, 2019, decision # 194452 became final without claimant having filed a request for hearing.

On March 31, 2020, claimant filed late requests for hearing on decisions # 92324 and # 194452. On April 9, 2020, ALJ Kangas issued Order No. 20-UI-147770, dismissing claimant's late request for hearing on decision # 92324, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 23, 2020. On April 9, 2020, ALJ Kangas also issued Order No. 20-UI-147768, dismissing claimant's late request for hearing on decision # 194452, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 23, 2020.

On April 29, 2020, claimant filed late responses to the appellant questionnaires and timely applications for review of Orders No. 20-UI-147770 and 20-UI-147768 with the Employment Appeals Board (EAB). On May 4, 2020, ALJ Kangas mailed letters to claimant stating that because claimant's responses to the questionnaires were late, they would not be considered, and Orders No. 20-UI-147770 and 20-UI-

147768 remained in effect. These matters are now before EAB based on claimant's April 29, 2020 applications for review of Orders No. 20-UI-147770 and 20-UI-147768.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-147770 and 20-UI-147768. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0345 and 2020-EAB-0346).

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 identical responses to the appellant questionnaires in each case. Each has been marked as EAB Exhibit 1 and a copy provided to the parties with these decisions. Any party that objects to our admitting EAB Exhibit 1 to the record of each case 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 March 25, 2019, the Department mailed decision # 92324 to claimant's address on file with the Department. Claimant received the decision shortly after it was mailed. Exhibit 2 (Order No. 20-UI-147770). Decision # 92324 stated that the deadline for a timely appeal of the decision was April 15, 2019, that a hearing could be requested by returning an attached form or contacting the Department by telephone and, "If you do not understand this decision, contact the Unemployment Insurance Center above immediately." Exhibit 1 (Order No. 20-UI-147770).

(2) Claimant did not appeal decision # 92324 by the deadline stated in the decision because he had started a new job on March 13, 2019, and believed "[he] had already worked the minimum [\$1,008]" required by the decision necessary to end the denial of benefits. EAB Exhibit 1. Claimant did not anticipate or understand that a work separation reported incorrectly in decision # 92324 might later result in the imposition of penalty weeks against him. EAB Exhibit 1; Exhibit 2 (Order No. 20-UI-147770).

(3) On October 23, 2019, the Department mailed decision # 194452 to claimant's address on file with the Department. Claimant received the decision shortly after it was mailed. Exhibit 2 (Order No. 20-UI-147768); EAB Exhibit 1. Decision # 194452 stated that the deadline for a timely appeal of the decision was November 12, 2019, and further stated, "If you do not understand this decision, contact the Investigations Unit immediately at 503-947-1995." Exhibit 1 (Order No. 20-UI-147768).

(4) Claimant did not appeal decision # 194442 by the November 12, 2019 deadline because the nature of his work separation from the employer had not yet been corrected in the employer's records, and he did not anticipate being laid off from his new job and having his benefits affected by the penalty weeks imposed. Exhibit 2 (Order No. 20-UI-147768).

CONCLUSIONS AND REASONS: Claimant's late requests for hearing on decisions # 92324 and # 194452 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. OAR 471-040-0010(1)(b)(B) also provides that good cause does not include not understanding the implications of a decision or notice when it is received.

The deadline for claimant to file a timely request for hearing on decision # 92324 expired on April 15, 2019, more than 11 months before he filed his request for hearing on March 31, 2020. Claimant explained in his request for hearing and questionnaire response that he did not appeal the decision by April 15, 2019 because he had started a new job on March 13, 2019, “had already worked the minimum [\$1,008],” and believed that in doing so, he had ended the denial of benefits. EAB Exhibit 1; Exhibit 2 (Order No. 20-UI-147770). More likely than not, claimant did not anticipate or understand that failing to request a hearing when he disagreed with how the decision characterized his work separation might later result in the imposition of penalty weeks against him. If claimant had understood the implications of decision # 92324, more likely than not he would have appealed the decision in a timely manner despite having earned more than the amount required by decision # 92324 to end the denial of benefits. Under OAR 471-040-0010(1)(b)(B), not understanding the implications of a decision when received does not constitute good cause to extend the deadline for a timely hearing request. Accordingly, because claimant did not otherwise establish that factors beyond his reasonable control or an excusable mistake prevented him from filing a timely hearing request, claimant did not establish good cause for his late hearing request on decision # 92324.

The deadline for claimant to file a timely request for hearing on decision # 194452 expired on November 12, 2019, more than four months before he filed his request for hearing on March 31, 2020. Claimant explained in his late request for hearing that he did not timely appeal decision # 194452 because the nature of his work separation from the employer had not yet been corrected in the employer’s records, and he did not anticipate being laid off from his new job and having his benefits affected by the penalty weeks imposed. Exhibit 2 (Order No. 20-UI-147768). More likely than not, claimant did not fully anticipate or understand that the penalty weeks imposed by decision # 194452 might affect his future entitlement to benefits because if he had, he would have appealed the decision in a timely manner to protect himself despite having a new employer and what appeared to be a steady job. Again, under OAR 471-040-0010(1)(b)(B), not understanding the implications of a decision when received does not constitute good cause to extend the deadline for a timely hearing request. Accordingly, because claimant did not otherwise establish that factors beyond his reasonable control or an excusable mistake prevented him from filing a timely hearing request, claimant did not establish good cause for his late hearing request on decision # 194452.

Absent evidence that claimant had good cause for filing late requests for hearing on decisions # 92324 and # 194452, the requests for hearing are dismissed, leaving decisions # 92324 and # 194452 undisturbed.

DECISION: Orders No. 20-UI-147770 and 20-UI-147768 are affirmed.

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

DATE of Service: May 13, 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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