

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0388

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On July 11, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for committing a disqualifying act, and claimant was disqualified from receiving unemployment insurance benefits effective June 2, 2019 (decision # 92950). On July 31, 2019, decision # 92950 became final without claimant having filed a timely request for hearing. On March 25, 2020, claimant filed a late request for hearing. On April 15, 2020, ALJ Kangas issued Order No. 20-UI-148085, dismissing claimant's late request for hearing subject to claimant's right to renew the request by responding to an appellant questionnaire by April 29, 2020. On May 5, 2020, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 20-UI-148085 with the Employment Appeals Board (EAB). On May 13, 2020, ALJ Kangas mailed a letter stating that because claimant's response to the questionnaire was late, the Office of Administrative Hearings (OAH) would not consider it or issue another order, and Order No. 20-UI-148085 remained in effect. This matter is before EAB based upon claimant's timely application for review of Order No. 20-UI-148085.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision 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 a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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.

FINDING OF FACT: On July 11, 2019, the Department mailed decision # 92950 to claimant's address on file with the Department. Claimant received the decision shortly after it was mailed. Decision # 92950 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than July 31, 2019." Exhibit 1. The decision also stated, "If you do not understand this decision, contact the Unemployment Insurance Center above immediately." Exhibit 1.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 92950 is 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 # 92950 expired on July 31, 2019, more than 7 months before she filed her request for hearing on March 25, 2020. Claimant stated in her late request for hearing that the reason for her late filing was that she "was looking into legal representation," and "needed to speak to a lawyer." Exhibit 2. She stated in her questionnaire response that she did not appeal the decision by July 31, 2019 because "I did not know I could appeal the decision, I'm confused with all of this," and, "So many papers . . . stressful . . . did not understand." However, decision # 92950 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than July 31, 2019," and also stated, "If you do not understand this decision, contact the Unemployment Insurance Center above immediately." Claimant admitted in her questionnaire response that, to meet the deadline, she "could have kept calling and/or emailed [the Department] with questions". EAB Exhibit 1.

Claimant's request for hearing and response to the appellant questionnaire do not show that factors beyond claimant's reasonable control prevented her from reading the entire decision and learning about her appeal right and the deadline to exercise it, or contacting the Department for assistance in understanding her appeal right before the deadline expired on July 31, 2019. And although claimant's failure to file a timely request for hearing was likely the result of a mistake on her part, it was not an "excusable mistake" within the meaning of the administrative rules because it does not, for example, raise a due process issue, and the record fails to show that it was the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Because claimant failed to establish good cause to extend the deadline for filing a request for hearing on decision # 92950, her late request for hearing is dismissed, leaving decision # 92950 undisturbed.

DECISION: Order No. 20-UI-148085 is affirmed.

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

DATE of Service: May 21, 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 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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