

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0400

Affirmed
Request to Reopen Allowed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On August 29, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant left work without good cause and was disqualified from receiving benefits effective July 28, 2019 (decision # 132747). On September 18, 2019, decision # 132747 became final without claimant having filed a timely request for hearing.

On February 3, 2020, claimant filed a late request for hearing. On February 13, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for March 10, 2020 at 9:30 a.m., at which claimant failed to appear. On March 17, 2020, ALJ Wyatt issued Order No. 20-UI-146332, dismissing claimant's late request for hearing for failure to appear.

On March 26, 2020, claimant filed a timely request to reopen the March 10th hearing. On April 7, 2020, OAH mailed notice of a hearing scheduled for April 15, 2020 at 2:30 p.m. On April 15, 2020, ALJ Williams conducted a hearing, and on April 27, 2020 issued Order No. 20-UI-148817, allowing claimant's request to reopen and re-dismissing claimant's late request for hearing. On May 18, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's request to reopen is **adopted**. The remainder of this decision will focus entirely upon the late request for hearing issue.

FINDINGS OF FACT: (1) Claimant is one of 15 individuals who live in a "community setting," split between two houses. Audio record at 25:57. Within that setting, mail comes to one location where each of the tenants has equal access to the mail upon arrival. Sometimes claimant's mail was "sitting on the table," sometimes another tenant would bring claimant's mail "to his door," and sometimes claimant picked up the mail himself. Audio record at 8:06.

(2) Claimant's last week claiming unemployment insurance benefits was the week ending August 10, 2019 (week 32-19). Claimant represented on his claim that his separation was for "lack of work." Audio record at 16:48.

(3) On August 27, 2019, claimant had a phone conversation with a Department adjudicator as part of the adjudicator's investigation of the claim. During this conversation, claimant and the adjudicator talked about claimant's work separation and "why [claimant] had filed the claim as a lack of work." Audio record at 18:13. At the end of the conversation, the adjudicator inquired whether "once a decision has been issued, would [claimant] like to receive a copy via first-class mail or email." Audio Record at 18:21. Claimant indicated his preference for first-class mail and the adjudicator verified claimant's mailing address.

(4) On August 29, 2019, the Department mailed notice of an administrative decision concluding claimant left work without good cause and was disqualified from receiving benefits effective July 28, 2019 (decision # 132747). Claimant never received a copy of the administrative decision.

(5) Between August 29, 2019 and January 14, 2019, the Department and claimant had no communication specifically related to decision # 132747. "There were letters sent out from [the Department's] misrepresentation unit... regarding why [claimant] had filed his claim as a lack of work... instead of stating that [his] separation was otherwise." Audio record at 16:38.

(6) On January 14, 2020, the Department served notice of an administrative decision assessing against claimant an overpayment, monetary penalty, and penalty weeks (the misrepresentation decision). The misrepresentation decision was issued as a result the Department's determination that claimant had made misrepresentations in his claim for benefits related to his work separation and as a result had received an overpayment of benefits. The misrepresentation decision made reference to the Department's August 29, 2019 administrative decision concluding claimant left work without good cause (decision # 132747).

(7) Shortly after January 14, 2020, claimant received the misrepresentation decision giving him notice "that I owed them some money, and a penalty, and then later I found out cause they said because I voluntary quit." Audio record at 34:45.

CONCLUSIONS AND REASONS: Claimant's late request for hearing should 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.

While the preponderance of the evidence supports the conclusion that claimant had good cause for filing his late request for hearing, given that the circumstances surrounding the receipt of his mail were beyond his reasonable control, claimant has failed to demonstrate that he filed his late request for hearing within seven days of the date when the circumstances that had prevented him from filing a timely request for

hearing ceased to exist. Instead, the preponderance of the evidence supports the conclusion that shortly after January 14, 2020, claimant received the misrepresentation decision and that the contents of that decision referenced the Department's August 29, 2019 administrative decision concluding claimant left work without good cause (decision # 132747). Claimant did not file his late request for hearing until twenty days later on February 3, 2020. Because "a reasonable time" is defined as seven days, and claimant waited twenty days, he did not file his late request for hearing within "a reasonable time." Claimant's late request for hearing is therefore dismissed, and he is not entitled to a hearing on the merits of decision # 132747.

DECISION: Order No. 20-UI-148817 is affirmed.

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

DATE of Service: May 27, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need 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 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

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.

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.