

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0462

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On February 28, 2020, the Oregon Employment Department (the Department) served claimant notice of an administrative decision concluding that claimant was not available for work for the period from February 9, 2020 through February 22, 2020, and therefore was denied unemployment insurance benefits for that period and until the reason for the denial ended (decision # 104649). On March 19, 2020, decision # 104649 became final without claimant having filed a request for hearing. On April 1, 2020, claimant filed a late request for hearing. ALJ Kangas reviewed claimant's request, and on April 17, 2020 issued Order No. 20-UI-148345, dismissing the request as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 1, 2020.

On April 27, 2020, claimant filed a timely response to the appellant questionnaire. On May 4, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for May 15, 2020 to consider claimant's late request for hearing, and if granted, the merits of decision # 104649. On May 15, 2020, ALJ Shoemake conducted a hearing, and on May 20, 2020 issued Order No. 20-UI-150081, re-dismissing claimant's late request for hearing as without good cause, leaving decision # 104649 undisturbed. On June 9, 2020, claimant filed a timely application for review of Order No. 20-UI-150081 with the Employment Appeals Board (EAB).

EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) Claimant claimed unemployment insurance benefits for the weeks including February 9, 2020 through February 22, 2020. Claimant spoke with a Department adjudicator about his claim on February 26 and 27, 2020. Claimant understood that the Department would use information from those conversations to make a decision regarding his claim. On February 28, 2020, claimant called the adjudicator and asked about the status of his claim. The adjudicator told claimant that the Department had not yet issued a decision. Claimant suspected by the "tone of the adjudicator's voice" that the Department would deny him benefits. Audio Record at 13:23.

(2) On February 28, 2020, the Department mailed decision # 104649 to claimant's address of record. At all times relevant herein, claimant did not change his address of record with the Department. The decision stated that a request for hearing must be filed on or before March 19, 2020 to be timely. Exhibit 1.

(3) On February 28, 2020, claimant and his family moved into his camper, and on March 1, 2020 a renter moved into claimant's home. Claimant made no arrangements with the tenant regarding claimant's mail. Claimant did not tell the renter that claimant was expecting mail from the Department. Claimant made arrangements to receive some of his other mail online, but did not notify the Department that he was not living in the home at his address. For about two weeks, claimant did repairs to his home while living in his camper on his property.

(4) On about March 15, 2020, claimant and his family drove their camper to California, where they stayed on a family member's property. On March 29, 2020, claimant and his family returned to claimant's property in Oregon.

(5) On March 31, 2020, claimant's tenant went to where claimant's camper was on claimant's property and gave him mail that had been delivered to claimant's address, including decision # 104649. Claimant read the decision and requested a hearing on April 1, 2020.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 104649 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. The Department mailed decision # 104649 to claimant on February 28, 2020. Therefore, to be timely, claimant had to request a hearing within 20 days, by March 19, 2020. Claimant's request for hearing was late because he filed it on April 1, 2020.

The record does not show that claimant had good cause to extend the 20-day deadline due to factors beyond claimant's reasonable control. Claimant moved out of his home on February 28, 2020, and presumably did not have direct access to mail delivered to his address once a renter moved into the home on March 1, 2020. However, claimant knew that a decision was pending in his unemployment benefit case, having just spoken to an adjudicator about his claim on February 26, 27, and 28. Claimant suspected the Department would deny his claim for benefits, and therefore knew or should have known that it was likely the Department would issue a decision after his conversations with the adjudicator. It was within claimant's reasonable control to make arrangements with his renter regarding his mail, and to contact the renter and ask if the renter had received any of claimant's mail. It also was within claimant's reasonable control to notify the Department that he was not receiving mail at his home address. Claimant also may have been able to have his mail delivered to another address, or obtain a post office box. Claimant did none of these things.

The record also fails to show that claimant had good cause to extend the 20-day deadline due to an excusable mistake. An “excusable mistake” is generally considered a mistake that raises a due process issue, or was the result of inadequate notice, reasonable reliance on another or the inability to follow directions despite substantial efforts to comply. The record does not show that there was a due process issue or inadequate notice to claimant of decision # 104649, or claimant’s appeal rights. The Department mailed the decision containing information about how to appeal the decision to claimant’s address of record, and claimant did not take steps to ensure he would receive mail from the Department during March 2020.

Because the record does not show that factors beyond claimant’s reasonable control or an excusable mistake caused his late request for hearing, claimant has not shown good cause for his late request. Accordingly, claimant’s late request for hearing is dismissed.

DECISION: Order No. 20-UI-150081 is affirmed.

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

DATE of Service: June 19, 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 ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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