

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0491

Late Applications for Review Dismissed

PROCEDURAL HISTORY AND FINDINGS OF FACT: On March 12, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause and was disqualified from receiving unemployment insurance benefits effective December 2, 2018 (decision # 120034). On March 13, 2019, the Department served notice of an administrative decision concluding claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and was assessed a \$2,060 overpayment, \$309 monetary penalty, and 14 penalty weeks (decision # 194865). On April 1, 2019, decision # 120034 became final without claimant having filed a timely request for hearing. On April 2, 2019, decision # 194865 became final without claimant having filed a timely request for hearing.

On May 14, 2019, claimant filed a late request for hearing on decisions # 120034 and 194865. ALJ Kangas reviewed claimant's late request and on May 20, 2019, issued Order No. 19-UI-130176, dismissing claimant's late request for hearing on decision # 120034 subject to claimant's right to renew the request by responding to an appellant questionnaire by June 3, 2019, and Order No. 19-UI-130183, dismissing claimant's late request for hearing on decision # 194865, also subject to claimant's right to renew the request by responding to an appellant questionnaire by June 3, 2019. On June 10, 2019, Orders No. 19-UI-130176 and 19-UI-130183 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On April 27, 2020, claimant filed a second late request for hearing on decision # 194865. On June 17, 2020, the Office of Administrative Hearings (OAH) issued a letter construing claimant's second late request for hearing as a request for reconsideration of Order No. 19-UI-130183, and denying that request. On June 19, 2020, claimant filed late applications for review of Orders No. 19-UI-130176 and 19-UI-130183 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 19-UI-130176 and 19-UI-130183. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0491 and 2020-EAB-0490).

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 19-UI-130176 and 19-UI-130183 are dismissed.

An application for review is timely if it is filed within 20 days of the date that OAH mailed the decision for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The applications for review of Orders No. 19-UI-130176 and 19-UI-130183 were due by June 10, 2019. The appellant filed their applications for review one year late, on June 19, 2020. The deadline for filing a late application for review may be extended under certain circumstances. OAR 471-041-0070. In their applications for review, claimant stated, “There was an issue with my phone, and I did not receive the Appellant Questionnaire.” Claimant’s Applications for Review. Claimant’s statement implied that his applications for review were late because he did not receive Orders No. 19-UI-130176 and 19-UI-130183, containing the appellant questionnaires, in the mail.

Oregon law provides a presumption that a letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(1)(q). Claimant did not provide enough information in his applications for review to overcome the presumption that he received Orders No. 19-UI-130176 and 19-UI-130183. Moreover, even assuming claimant did not receive the orders, claimant did not state when he became aware of Orders No. 19-UI-130176 and 19-UI-130183. Absent that information, EAB cannot find that claimant’s alleged failure to receive Orders No. 19-UI-130176 and 19-UI-130183 in the mail prevented him from filing timely applications for review. Nor could we find that claimant filed his applications for review within a reasonable time, seven days, after he otherwise became aware of Orders No. 19-UI-130176 and 19-UI-130183. Claimant’s late applications for review are therefore dismissed.

DECISION: The applications for review filed June 19, 2020 are dismissed. Orders No. 19-UI-130176 and 19-UI-130183 remain undisturbed.

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

DATE of Service: July 2, 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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