

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0494

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On August 13, 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 February 24, 2019 (decision # 113941). On August 26, 2019, the Department served notice of an administrative decision concluding claimant willfully made a misrepresentation and failed to report material facts to obtain benefits, and was assessed a \$2,478 overpayment, a \$619.50 monetary penalty, and 20 penalty weeks (decision # 194249). Claimant filed a timely request for hearing on both decisions. On September 13, 2019, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 26, 2019 at 2:30 p.m. on decision # 113941, and for September 26, 2019 at 3:30 p.m. on decision # 194249. On September 26, 2019, claimant failed to appear for the hearing on decision # 113941, and on October 3, 2019, ALJ Shoemake issued Order No. 19-UI-137451, dismissing claimant's request for hearing on decision # 113941, leaving that decision undisturbed. On September 26, 2019, ALJ Shoemake conducted a separate hearing on decision # 194249 at which claimant appeared, and on October 3, 2019, issued Order No. 19-UI-137498, affirming decision # 194249. On October 23, 2019, Orders No. 19-UI-137451 and 19-UI-137498 became final without claimant having filed a motion to reopen the September 26, 2019 2:30 p.m. hearing on decision # 113941 or applications for review with the Employment Appeals Board (EAB).

On November 1, 2019, claimant filed a late request to reopen the September 26, 2019 2:30 p.m. hearing on decision # 113941. ALJ Kangas considered claimant's request, and on November 13, 2019, issued Order No. 19-UI-139615, denying the request. On December 3, 2019, Order No. 19-UI-139615 became

final without claimant having filed an application for review with EAB. On June 25, 2020, claimant filed late applications for review of Orders No. 19-UI-137498 and 19-UI-139615 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 19-UI-137498 and 19-UI-139615. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0493 and 2020-EAB-0494).

FINDING OF FACT: (1) Orders No. 19-UI-137498 and 19-UI-139615 each stated, “You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed.” Order No. 19-UI-137498 at 4; Order No. 19-UI-139615 at 4.

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 19-UI-137498 and 19-UI-139615 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 application for review of Order No. 19-UI-137498 was due by October 23, 2019, and the application for review of Order No. 19-UI-139615 was due by December 3, 2019. The appellant filed their applications for review late, on June 25, 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 that they did not know Orders No. 19-UI-137498 and 19-UI-139615 were affecting their ability to qualify for benefits claimed in March 2020 until June 23, 2020, or that they could apply for review of Orders No. 19-UI-137498 and 19-UI-139615 with EAB. Claimant also stated that they were unable to speak with a Department representative until June 23, 2020 to learn why their March 2020 claim was denied. However, Orders No. 19-UI-137498 and 19-UI-139615 stated claimant had the right to appeal to EAB, and that the applications for review to EAB were due within 20 days of the dates those orders were mailed. Claimant’s statement does not show that factors beyond claimant’s reasonable control prevented them from filing an application for review during the 20 days after the orders were mailed. Moreover, Order No. 19-UI-137498 assessed 20 penalty weeks, and it was within claimant’s reasonable control to read that decision and ensure that they understood the consequences of not appealing it in a timely manner. Accordingly, claimant did not show good cause for the late applications for review, and claimant’s late applications for review are dismissed.

DECISION: The applications for review filed June 25, 2020 are dismissed. Orders No. 19-UI-137498 and 19-UI-139615 remain undisturbed.

D. P. Hettle and S. Alba;
J. S. Cromwell, 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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