

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0518

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On January 13, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant willfully made misrepresentations and failed to report material facts to obtain benefits and assessing a \$3,143 overpayment, a \$942.90 monetary penalty and a 52-week penalty disqualification from future benefits (decision # 192952). On February 2, 2017, decision # 192952 became final without claimant having filed a timely request for hearing.

On April 21, 2020, claimant filed a late request for hearing. On May 19, 2020, ALJ Kangas issued Order No. 20-UI-149961, dismissing claimant's late request for hearing, subject to claimant's right to renew the request by responding to an appellant questionnaire by June 2, 2020. On May 26, 2020, claimant filed a timely response to the appellant questionnaire. On June 10, 2020, the Office of Administrative Hearings (OAH) cancelled and vacated Order No. 20-UI-149961, and mailed notice of a hearing scheduled for June 26, 2020 to consider claimant's late request for hearing, and if granted, the merits of decision # 192952.

On June 26, 2020, ALJ Monroe conducted a hearing at which the employer failed to appear, and on July 2, 2020 issued Order No. 20-UI-151829, re-dismissing claimant's late request for hearing as without good cause, leaving decision # 192952 undisturbed. On July 7, 2020, claimant filed a timely application for review of Order No. 20-UI-151829 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On January 13, 2017, the Department mailed decision # 192952 to claimant's address on file with the Department. Decision # 192952 stated that for an appeal of the decision to be timely, the appeal was required to be filed on or before February 2, 2017. However, by the end of November 2016, claimant had ceased claiming benefits and had moved to a new address. As a result, claimant did not receive decision # 192952, which the United States Postal Service (USPS) returned to the Department as undeliverable. Exhibit 5.

(2) On February 23, 2017, the Department contacted claimant to advise him that decision # 192952 had been issued but returned by the post office as undeliverable. Claimant provided the Department with his

updated address at that time. On February 23, 2020, the Department re-mailed decision # 192952 to claimant at his updated address on file with the Department. That mailing was not returned to the Department as undeliverable.

(3) Beginning on March 1, 2017, the Department mailed monthly billing statements to claimant at his updated address on file with the Department. Those billing statements were not returned to the Department as undeliverable.

(4) On June 8, 2017, the Department contacted claimant by telephone because no payments had been made. The Department and claimant discussed and agreed to a repayment plan of \$100 per month beginning in July 2017. Claimant's address and telephone number were confirmed as current. However claimant did not make any payments under the agreed plan.

(5) In March 2020, claimant was laid off by his employer and he filed a new claim for benefits. However, the Department did not pay benefits to claimant because of the penalty weeks remaining under decision # 192952.

(6) On April 21, 2020, claimant filed a late request for hearing regarding decision # 192952.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 192952 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 deadline for claimant to file a timely request for hearing on decision # 192952 expired on February 2, 2017. Because claimant's request for hearing was not filed until April 21, 2020, the request was late. The record shows that claimant did not receive the Department's mailing of decision # 192952 in January 2017 because his address had changed and that mailing was returned to the Department as undeliverable. Accordingly, claimant had good cause for not requesting a hearing on decision #210565 by the February 2, 2017 deadline.

However, the record shows that no later than the end of March 2017, claimant was aware that decision # 192952 had been issued. On February 23, 2017, the Department informed him of decision # 192952 by telephone and re-mailed a copy of that decision to his updated address on file with the Department. From March 1, 2017 through at least June 2017, the Department also mailed claimant monthly billing statements, which were not returned by the USPS as undeliverable, to his updated address. More likely than not, claimant was aware of decision # 192952 or its effects by the end of March 2017. Therefore, the factors that prevented claimant from filing a request for hearing ceased to exist no later than the end of March 2017. Claimant filed his request for hearing three years, more than seven days, after the factors that prevented a filing had passed.

Absent evidence that factors beyond his reasonable control prevented him from requesting a hearing within the seven days “reasonable time” after gaining such knowledge, claimant did not establish that he filed his late requests for hearing within the seven-day “reasonable time” period after the factors that prevented a timely filing ceased to exist.

To any extent claimant’s failure to file his hearing request within that time period was the result of a mistake on claimant’s part, it was not an “excusable mistake” within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Claimant did not establish good cause for the late request for hearing, and the request is therefore dismissed.

DECISION: Order No. 20-UI-151829 is affirmed. Decision # 192952 remains undisturbed.

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

DATE of Service: July 17, 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 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.

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