

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0533

Application for Review Dismissed Without Prejudice

PROCEDURAL HISTORY AND FINDINGS OF FACT: On February 11, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant willfully misrepresented material facts to obtain benefits and assessing a \$339 overpayment, \$50.85 monetary penalty, and 7 penalty weeks (decision # 200741). Claimant filed a timely request for hearing. On March 19, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing on April 3, 2020 at 1:30 p.m. On April 3, 2020, claimant failed to appear for the hearing, and ALJ Scott issued Order No. 20-UI-147481 dismissing claimant's hearing request for failure to appear. On April 8, 2020, claimant filed a request to reopen the hearing, and on April 29, 2020, OAH mailed notice of a hearing on May 12, 2020 at 1:30 p.m. to consider claimant's request to reopen, and if granted, the merits of decision # 200741. On May 12, 2020, claimant failed to appear for the hearing, and ALJ Logan issued Order No. 20-UI-149614 dismissing claimant's hearing request for failure to appear. On May 18, 2020, claimant filed another request to reopen the hearing, and on May 20, 2020, OAH mailed notice of a hearing on June 2, 2020 at 9:30 a.m. to consider claimant's requests to reopen, and if granted, the merits of decision # 200741. On June 2, 2020, ALJ Logan conducted a hearing at which claimant appeared and on June 3, 2020, issued Order No. 20-UI-150559 granting claimant's requests to reopen the April 3 and May 12, 2020 hearings, and concluding claimant was entitled to a hearing on the merits of decision # 200741.

On June 4, 2020, OAH mailed notice of a hearing on June 17, 2020 on the merits of decision # 200741. On June 17, 2020, ALJ Logan conducted a hearing at which the employer Knife River failed to appear, and on June 18, 2020, issued Order No. 20-UI-151210 affirming decision # 200741. On July 8, 2020, Order No. 20-UI-151210 became final without claimant having filed a timely application for review with the Employment Appeals Board (EAB). On July 16, 2020, claimant filed a late application for review with EAB.

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

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 20-UI-151210 is dismissed without prejudice.

Prior to July 16, 2020, EAB did not receive an application for review of Order No. 20-UI-151210 from claimant. On July 16, 2020, the appellant sent an email to OAH stating that he had "[o]fficially requested a review of a claim on June 29, 2020," but had not received a response. Claimant's Application for Review. OAH construed the email as a late application for review of Order No. 20-UI-151210 with EAB. ORS 657.270(6) and ORS 657.270(7)(b) required the application for review to be filed no later than July 8, 2020. The appellant's application for review was therefore late, and the application for review is dismissed.

The deadline for filing an application for review may be extended a reasonable time upon a showing of good cause. *See* ORS 657.875; OAR 471-041-0070. If the appellant believes they have good cause and filed their late application for review within a reasonable time, the appellant may request that EAB reconsider this decision under OAR 471-041-0145.

EAB will dismiss any request for reconsideration that does not include **all four** of the following:

1. The appellant must file the request for reconsideration within 20 days of the date this decision was mailed, August 24, 2020, *and*
2. The appellant must provide additional specific details about the reason they filed a late application for review. For example, the appellant should include specific information about the date they received the ALJ's order, whether they read it, whether they agreed or disagreed with the ALJ's order, the reason(s) why they did not file the application for review before the deadline, whether they or their families were ill or quarantined around the deadline, whether they could not file a timely application for review for any other reason(s) not related to illness or quarantine, how that affected their ability to file a timely application for review, and any other specific details that might help EAB determine whether or not the appellant had "good cause," which means factors or circumstances beyond their reasonable control prevented them from filing a timely application for review.

In this case, claimant asserted in their application for review that they "requested review of a claim on June 29, 2020." Claimant should include specific information about where they sent the request, the email address or other address where they sent the application, a copy of such request and confirmation of receipt of the request if available, when they sent the request, *and*

3. The appellant must provide the date the circumstances that prevented them from filing a timely application for review (which they listed in response to #2, above) ceased to exist, *and*
4. The appellant must provide sufficient information to prove that they filed their application for review within seven days of the date they listed in response to question #3, above.

The appellant may file a request for reconsideration in many ways; please note that you need only file *one* request for reconsideration:

1. Use your smart phone, tablet, or computer to fill out the “File a Written Argument” form, available on EAB’s website, with the answers to the above questions:
<https://www.oregon.gov/EMPLOY/EAB/Pages/default.aspx>, *or*
2. Use your smart phone, tablet, or computer to send an email to EAB at OED_EAB_OFFICE@oregon.gov, *or*
3. Send the request by U.S. mail or another delivery service, addressed to 875 Union St NE, Salem, Oregon 97311, *or*
4. Send EAB a fax at 503-378-2129.

DECISION: The application for review filed July 16, 2020 is dismissed without prejudice. Order No. 20-UI-151210 remains undisturbed.

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

DATE of Service: August 4, 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 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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