

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0549

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On May 21, 2015, 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 \$520 overpayment, a \$78 monetary penalty, and 4 penalty weeks of disqualification from future benefits (decision # 194156). On June 10, 2015, decision # 194156 became final without claimant having filed a timely request for hearing.

On July 8, 2020, claimant filed a late request for hearing. On July 10, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for July 21, 2020 to consider whether claimant had good cause for their late request for hearing. On July 21, 2020, ALJ Griffin conducted a hearing at which the employer failed to appear, and issued Order No. 20-UI-152380, denying claimant's late request for hearing and leaving decision # 194156 undisturbed. On July 25, 2020, claimant filed a timely application for review of Order No. 20-UI-152380 with the Employment Appeals Board (EAB).

With their application for review, claimant submitted a written argument. EAB considered claimant's argument to the extent it was based on the hearing record.

FINDINGS OF FACT: (1) On May 21, 2015, the Department mailed decision # 194156 to claimant's address of record on file with the Department. Decision # 194156 stated, in relevant part:

"If you do not understand this decision, contact the Investigations Unit immediately at 503-947-1995 . . . To be timely, any appeal from this decision must be filed on or before June 10, 2015."

Exhibit 1.

(2) Claimant received decision # 194156 and disagreed with its conclusion that claimant had willfully made misrepresentations to obtain benefits. However, claimant also concluded that claimant may have

been “in the wrong.” Audio Record at 16:15 to 16:45. For that reason, claimant chose to not appeal the decision and instead made arrangements with the Department to repay the overpayment and monetary penalty. Claimant did not understand at the time that if claimant filed future claims for benefits, decision # 194156 might disqualify claimant from receiving benefits claimant otherwise might be eligible to receive.

(3) In 2020, claimant was furloughed from work and subsequently filed claims for unemployment insurance benefits. Claimant did not receive any benefits because claimant had not yet served the penalty weeks assessed in decision # 194156. After claimant learned the reason that benefits had been denied, claimant requested a hearing.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing on decision # 194156 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. Under OAR 471-040-0010(1)(b)(B), good cause does not include not understanding the implications of a decision or notice when it is received.

On May 21, 2015, the Department mailed decision # 194156 to claimant at claimant’s address of record on file with the Department. The decision notified claimant that the 20-day deadline for claimant to file a timely request for hearing was June 10, 2015. Claimant did not file a request for hearing until July 8, 2020. Accordingly, claimant’s hearing request was late.

Claimant failed to show that factors beyond claimant’s reasonable control prevented claimant from filing a timely hearing request. Claimant did not dispute having received decision # 194156 in the regular course of the mail, or that claimant read the decision when claimant received it. Claimant chose to not appeal the decision and repay the overpayment and monetary penalty assessed after recognizing that claimant may have been “in the wrong.” More likely than not, claimant did not understand that the penalty weeks also assessed in decision #194156 might disqualify claimant from receiving future benefits even after the overpayment and monetary penalty had been paid. However, it was within claimant’s reasonable control to contact the Department’s Investigations Unit at the telephone number provided in the decision and request an explanation of the decision and all of its implications before allowing the deadline for requesting a hearing to expire.

Claimant also failed to show that an excusable mistake prevented claimant from filing a timely hearing request. Although claimant’s failure to understand that claimant would still be subject to the penalty weeks even after the overpayment and monetary penalty were paid was likely 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. Because claimant failed to show that factors beyond claimant’s reasonable control or an excusable mistake prevented claimant from filing a hearing request by the June 10, 2015 deadline, claimant failed

to establish good cause to extend the filing deadline to July 8, 2020. Accordingly, claimant's late request for hearing is dismissed, leaving decision # 194156 undisturbed.

DECISION: Order No. 20-UI-152380 is affirmed.

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

DATE of Service: August 6, 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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