

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0627

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On November 15, 2017, the Oregon Employment Department (the Department) mailed notice of an administrative decision concluding claimant was not available for work during the week including October 15 through October 21, 2017, and was ineligible for benefits for that week (decision # 90910). On December 5, 2017, decision # 90910 became final without claimant having filed a timely request for hearing.

On July 30, 2020, claimant filed a late request for hearing regarding decision # 90910. On September 1, 2020, ALJ Kangas issued Order No. 20-UI-153517, dismissing claimant's late request for hearing subject to claimant's right to renew the request by responding to an appellant questionnaire by September 15, 2020. On September 16, 2020, claimant filed a late response to the appellant questionnaire, and a timely application for review of Order No. 20-UI-153517 with the Employment Appeals Board (EAB). On September 22, 2020, ALJ Kangas mailed a letter stating that because claimant's response to the questionnaire was late, it would not be considered, another order would not be issued, and Order No. 20-UI-153517 remained in effect. This matter is before EAB based on claimant's timely application for review.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's late response to the appellant questionnaire and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit will remain in the record.

FINDINGS OF FACT: (1) On November 15, 2017, the Department mailed decision # 90910 to claimant's address of record on file with the Department. Decision # 90910 stated, in relevant part, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than December 5, 2017." Exhibit 1.

(2) On July 30, 2020, a hearing was requested on decision # 90910 by email. Exhibit 2. The request for hearing did not include an explanation regarding why the request for hearing was submitted after the December 5, 2017 deadline.

(3) On September 16, 2020, claimant filed a late response to the appellant questionnaire by mail. In the response, claimant did not provide any information regarding why claimant's request for hearing on decision # 90910 was filed late. EAB Exhibit 1.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 90910 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. The deadline for claimant to file a timely request for hearing in this case was December 5, 2017. Claimant did not file a request for hearing until July 30, 2020. The request for hearing was over two years late.

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.

Claimant did not show good cause for the late request for hearing. Neither claimant's July 30, 2020 late hearing request nor claimant's September 16, 2020 late questionnaire response provided any information regarding why the request for hearing was submitted after the December 5, 2017 deadline. To any extent claimant's failure to file a timely hearing request was the result of a mistake on claimant's part, it was not an "excusable mistake" within the meaning of the administrative rules. The record does not, for example, raise a due process issue, and fails to show that any mistake was 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 on decision # 90910. Therefore, the request for hearing is dismissed.¹

DECISION: Order No. 20-UI-153517 is affirmed.

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

DATE of Service: September 30, 2020

¹ This decision is confined to claimant's ineligibility for regular unemployment insurance benefits under decision # 90910. However, claimant might be eligible for benefits under one of the Department's other unemployment insurance benefit programs, which are specifically intended as income replacement for individuals unemployed due to the COVID-19 pandemic. If the parties have questions about benefits or eligibility for alternative benefit programs, they may contact the Department; the Department's "Contact Us" form is available at <https://unemployment.oregon.gov/contact-us>.

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

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