

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0635

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On October 19, 2017, the Oregon Employment Department (the Department) served, by mail, notice of an administrative decision concluding claimant willfully made misrepresentations and failed to report material facts to obtain benefits, and assessing a \$1,415 overpayment, a \$212.25 monetary penalty and a 10-week penalty disqualification from future benefits (decision # 194820). On November 8, 2017, decision # 194820 became final without claimant having filed a timely request for hearing.

On July 28, 2020, claimant filed a late request for hearing. On August 27, 2020, ALJ Kangas issued Order No. 20-UI-153408, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 10, 2020. On September 8, 2020, claimant filed a timely response to the appellant questionnaire. ALJ Kangas reviewed claimant's questionnaire response, and on September 16, 2020 issued Order No. 20-UI-154025, cancelling and replacing Order No. 20-UI-153408, re-dismissing claimant's late request for hearing and leaving decision # 194820 undisturbed.

On September 25, 2020, claimant filed an application for review of Order No. 20-UI-153408. EAB has construed claimant's application for review of cancelled Order No. 20-UI-153408 as a timely application for review of Order No. 20-UI-154025, which replaced Order No. 20-UI-153408.

FINDINGS OF FACT: (1) On October 19, 2017, the Department mailed decision # 194820 to claimant's address of record on file with the Department. Decision # 194820 stated, in relevant part, "To be timely, any appeal from this decision must be filed on or before November 8, 2017." Exhibit 1 at 1.

(2) On November 13, 2017, claimant received decision # 194820 by mail.

(3) On July 28, 2020, claimant filed a late request for hearing on decision # 194820 by email. The request for hearing did not include an explanation regarding why the request for hearing was submitted after the November 8, 2017 deadline. Exhibit 2.

(4) On September 8, 2020, claimant filed a timely response to the appellant questionnaire by mail. When asked, “Was there anything you could have done to meet the [November 8, 2017] deadline?” claimant responded, “In this case, no . . . we had lost our last mailbox key, so we were unable to receive/collect our mail for several weeks during that time.” Exhibit 3 at 1. When asked what “prompted” claimant to file the hearing request on the day it was filed, claimant responded:

“I was laid-off from my job at the beginning of July 2020 due to the impact of the COVID-19 pandemic. I am eligible for Unemployment benefits, but cannot receive benefits until 10 penalty weeks from my 2017 claim have been served (per the 2017 administrative decision). I paid back the 2017 claim overpayment in full, but I believe the additional penalty weeks judgement was not deserved.”

Exhibit 3 at 1. Claimant did not explain why he did not file a request for hearing on decision # 194820 until July 28, 2020, more than two years after receiving the decision with which he disagreed.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing on decision # 194820 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 # 194820 expired on November 8, 2017. Because claimant’s request for hearing was not filed until July 28, 2020, the request was late. However, claimant did not receive the Department’s mailing of decision # 194820 until November 13, 2017 because his mailbox key had been lost, which prevented him from retrieving his mail for several weeks. More likely than not, factors beyond claimant’s reasonable control prevented claimant from requesting a hearing on decision # 194820 by the November 8, 2017 deadline. Claimant therefore established good cause to extend the deadline.

However, the factors that prevented claimant from filing a request for hearing ceased to exist on November 13, 2017, when claimant received decision # 194820. Claimant filed a request for hearing on July 28, 2020, which was more than two years after the factors that prevented claimant from filing a request for hearing had passed. Because claimant did not file his request for hearing within seven days after November 13, 2017, he did not file his late request for hearing within a “reasonable time” after the factors that prevented a timely filing ceased to exist. Claimant’s late request for hearing on decision # 194820 therefore is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

Claimant’s late request for hearing on decision # 194820 therefore is dismissed.

DECISION: Order No. 20-UI-154025 is affirmed.

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

DATE of Service: October 1, 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 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 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
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