

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0810

Order No. 20-UI-157444 Affirmed ~ Late Request for Hearing Dismissed
Order No. 20-UI-157457 Affirmed ~ Overpayment Assessed

PROCEDURAL HISTORY: On September 14, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective May 10, 2020 (decision # 135318). On September 25, 2020, the Department served notice of an administrative decision, based in part on decision # 135318, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$10,530 overpayment of \$3,930 in regular benefits and \$6,600 in FPUC benefits, a \$589.50 monetary penalty and a 25-week penalty disqualification from future benefits. On October 5, 2020, decision # 135318 became final without claimant having filed a timely request for hearing.

On October 8, 2020, claimant filed a late request for hearing on decision # 135318, and a timely request for hearing on the overpayment and penalties decision. On November 16, 2020, the Office of Administrative Hearings (OAH) mailed notice of a consolidated hearing scheduled for December 1, 2020 to consider claimant's late request for hearing and, if granted, the merits of decision # 135318, in addition to the merits of the overpayment and penalties decision.

On December 1, 2020, ALJ Frank conducted the consolidated hearing, and on December 9, 2020 issued Order No. 20-UI-157444 dismissing claimant's late request for hearing on decision #135318 as late without good cause, and Order No. 20-UI-157457 modifying the overpayment and penalties decision by assessing the \$10,530 overpayment but eliminating the penalties. On December 28, 2020, claimant filed applications for review of Orders No. 20-UI-157444 and Order No. 20-UI-157457 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-157444 and 20-UI-157457. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 20-EAB-0811 and 20-EAB-0810).

WRITTEN ARGUMENT: With each application for review, claimant submitted a written argument. Claimant did not declare that they provided a copy of their argument to the opposing party or parties

regarding Order No. 20-UI-156027 as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing regarding Order No. 20-UI-157444 when reaching the part of this consolidated decision concerning that case. *See* ORS 657.275(2).

EAB did consider claimant's written argument regarding Order No. 20-UI-157457 when reaching the part of this consolidated decision concerning that case to the extent it was based on the hearing record. In that argument, claimant essentially requested help in determining what his next steps should be to receive PUA benefits in light of the previous determinations or the appeal process. However, EAB is not the appropriate agency to which to address such requests. Claimant should visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the "Contact Us" form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

This decision first addresses whether claimant's late request for hearing on decision # 135318 should be allowed.

FINDINGS OF FACT: (1) On September 14, 2020, the Department mailed decision # 135318 to claimant's address of record on file with the Department. Decision # 135318 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 October 5, 2020. This decision DENIES benefits. If there are other decisions affecting your eligibility for benefits, you must appeal those decision(s) separately...If you do not understand this decision, contact the Unemployment Insurance Center above immediately."

Exhibit 1 at 2. Decision # 135318 notified claimant of the mailing address of the Department, three telephone numbers at which the Department could be reached, and a fax number to which claimant could fax information or requests to the Department. Exhibit 1 at 1.

(2) Decision # 135318 was received by claimant at his address of record in the regular course of the mail, by September 17, 2020. Claimant read the decision after he received it.

(3) On September 25, 2020, the Department mailed the overpayment and penalties administrative decision based in part on decision # 135318 to claimant's address of record on file with the Department. That administrative decision stated, in relevant part, "Any appeal from this decision must be filed on or before October 15, 2020 to be timely" and also notified claimant of the mailing address of the Department, a telephone number at which the Department could be reached and a fax number to which claimant could fax information or requests to the Department. Exhibit 3.

(4) On October 6, 2020, claimant retained legal representation regarding decision # 135318 and the overpayment and penalties decision.

(5) On October 8, 2020, claimant's legal representative filed a request for hearing on decision # 135318 by fax, using the fax number provided on decision # 135318.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 135318 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 Department mailed decision # 135318 to claimant at his address of record on September 14, 2020. It is reasonably inferred that claimant received decision # 135318 in the regular course of the mail, or by September 17, 2020, which was three business days after it was mailed.¹ The deadline for claimant to file a timely request for hearing on that decision was October 5, 2020. Claimant did not file a request for hearing until October 8, 2020, when his legal representative filed a request for hearing on his behalf. Accordingly, claimant's hearing request was late.

Claimant failed to show that factors beyond his reasonable control prevented him from filing a timely hearing request by October 5, 2020. Claimant asserted that he attempted to call the Department before October 6, 2020 but that when he did, he "had a very long, difficult time getting through to them...[and]...remained on hold sometimes for hours...[and was]... even hung up on." Transcript at 18. However, even if claimant had difficulty reaching a Department representative by phone, claimant did not establish that it was beyond his reasonable control to mail a letter request for hearing on decision # 135318 by mailing it to the address provided on the decision. Nor did claimant establish that it was beyond his reasonable control to fax a letter request for hearing using the same fax number provided on the decision that his legal representative used when faxing a hearing request on claimant's behalf on October 8, 2020.

Claimant also failed to show that an excusable mistake prevented him from filing a timely hearing request. Although claimant's failure to do so was likely the result of a mistake on his part, the record fails to show that it was an "excusable mistake" within the meaning of the administrative rules because it does 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.

¹ A letter duly directed and mailed is received in the regular course of the mail. ORS 40.135(1)(q). EAB also takes notice of the generally cognizable fact that first class domestic mail sent through the U.S. Postal Service is estimated to take 1-3 business days after mailing to be delivered. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available to the parties at <https://www.usps.com/ship/first-class-mail.htm>. Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

Because claimant failed to show that factors beyond his reasonable control or an excusable mistake prevented him from filing a hearing request by the October 5, 2020 deadline, he failed to establish good cause to extend the filing deadline beyond October 5, 2020. Accordingly, his late request for hearing on October 8, 2020 is dismissed, leaving decision # 135138 undisturbed.

On *de novo* review of the entire consolidated hearing record and pursuant to ORS 657.275(2), Order No. 20-UI-157457, which modified the September 15, 2020 overpayment and penalties decision by assessing the \$10,530 overpayment but eliminating the penalties, is **adopted**.

DECISION: Orders No. 20-UI-157444 and 20-UI-157457 are affirmed.

S. Alba and D. P. Hettle.

DATE of Service: January 22, 2021

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 الإستئناف 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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