

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0259

Affirmed
Late Requests for Hearing Denied

PROCEDURAL HISTORY AND FINDINGS OF FACT: On April 19, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit working for Sleep Inn Suites without good cause and was disqualified from receiving unemployment insurance benefits effective March 4, 2018 (decision # 134055). Also on April 19, 2018, the Department served notice of an administrative decision concluding that claimant was not able to work during the week of February 25, 2018 through March 3, 2018 and was denied benefits for that week (decision # 135658). On April 24, 2018, the Department served notice of an administrative decision based in part on decisions # 134055 and # 135658, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$474.00 overpayment that claimant was required to repay to the Department, a \$94.80 monetary penalty, and an eight-week penalty disqualification from future benefits (decision # 200840). On May 9, 2018, decisions # 134055 and # 135658 became final without claimant having filed a request for hearing. On May 14, 2018, decision # 200840 became final without claimant having filed a request for hearing. On October 18, 2019, the Department served notice of an administrative decision concluding that claimant quit working for Forest River Manufacturing LLC without good cause and was disqualified from receiving unemployment insurance benefits effective August 11, 2019 (decision # 120738). On November 7, 2019, decision # 120738 became final without claimant having filed a request for hearing.

On December 15, 2020, claimant filed late requests for hearing on decisions # 134055, # 135658, # 200840, and # 120738. ALJ Kangas considered claimant's requests, and on February 17, 2021 issued Orders No. 21-UI-161085, 21-UI-161092, 21-UI-161086, and 21-UI-161084, dismissing claimant's requests for hearing on decisions # 134055, # 135658, # 200840, and # 120738 as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by March 3, 2021. On February 27, 2021, claimant filed a timely response to the appellant questionnaire. ALJ S. Lee reviewed claimant's questionnaire response, and on March 18, 2021 issued Orders No. 21-UI-162970, 21-UI-162974, 21-UI-162986, and 21-UI-162976, cancelling and replacing Orders No. 21-UI-161085, 21-UI-161092, 21-UI-161086, and 21-UI-161084 and re-dismissing claimant's late requests for hearing on

decisions # 134055, # 135658, # 200840, and # 120738. On April 2, 2021, claimant filed applications for review of Orders No. 21-UI-162970, 21-UI-162974, 21-UI-162986, and 21-UI-162976 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-162970, 21-UI-162974, 21-UI-162986, and 21-UI-162976. For case-tracking purposes, this decision is being issued in quadruplicate (EAB Decisions 2021-EAB-0258, 2021-EAB-0259, 2021-EAB-0261, and 2021-EAB-0260).

CONCLUSIONS AND REASONS: Claimant’s late requests for hearing are 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 requests for hearing on decisions # 134055 and # 135658 were due by May 9, 2018. The request for hearing on decision # 200840 was due by May 14, 2018. The request for hearing on decision # 120738 was due by November 7, 2019. Because claimant’s requests for hearing on these decisions were filed on December 15, 2020, the requests for hearing were late.

In their appellant questionnaire response,¹ claimant noted that they received “the administrative decision” on what appears to be written as February 17, 2021, and that they filed their hearing request on January 20, 2021. Exhibit 3 at 3. It is not clear which decision(s) claimant is referring to in stating that they received it on February 17, 2021, although claimant may be referring to the orders issued on that date that dismissed claimant’s late requests for hearing. The record does not support the finding that claimant filed any hearing request on January 20, 2021, and claimant’s meaning in reporting that date is unclear.

Claimant also stated on their questionnaire response that they did not file their hearing requests before the deadlines because they “were on lockdown” due to COVID-19. Exhibit 3 at 6. Claimant further asserted that they were unable to file timely hearing requests due to COVID-19, explaining that, “Because of COVID and quarantine I was unable to make contact with the office as well as the death of my client . . . and the immediate needs of her husband . . . who still lives in his home.” Exhibit 3 at 1. Claimant also asserted that they were unable to request a hearing because they did not have a computer and “needed help with the paperwork.” Exhibit 3 at 1. In his late requests for hearing, claimant stated that they “would still be employed if [their] client were still alive, but since she died [on] October 22nd 2020 [I] have been told I walked away from a job I love!” Exhibit 2 at 2. Claimant did not provide further explanation for why they did not file their hearing requests by their respective deadlines.

¹ Although separate appellant questionnaires were included with each of Orders No. 21-UI-161085, 21-UI-161092, 21-UI-161086, and 21-UI-161084, claimant submitted one response to all four questionnaires. All citations herein refer to that one questionnaire response.

All of the information claimant has provided regarding their late requests for hearing relates to circumstances which arose in or after 2020. None of the information claimant provided explains why claimant did not file timely hearing requests in 2018 or 2019, when the decisions were issued and the deadlines for filing timely requests for hearing expired. Accordingly, claimant has not shown that they filed their hearing requests late as a result of an excusable mistake or factors beyond their control. Claimant therefore failed to establish good cause for filing his requests for late.

Claimant's late requests for hearing on decisions # 134055, # 135658, # 200840, and # 120738 therefore are dismissed.

DECISION: Orders No. 21-UI-162970, 21-UI-162974, 21-UI-162986, and 21-UI-162976 are affirmed.

S. Alba and D. P. Hettle.

DATE of Service: April 16, 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.

NOTE: This decision denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

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.

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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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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