

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0734

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On December 24, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective September 1, 2019 (decision # 90721). On December 26, 2019, the Department served notice of an administrative decision based in part on decision # 90721 concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain unemployment insurance benefits, and assessing a \$453.00 overpayment that claimant was required to repay to the Department, a \$67.95 monetary penalty, and a four-week penalty disqualification from future benefits (decision # 194247). On January 13, 2020, decision # 90721 became final without claimant having filed a request for hearing. On January 15, 2019, decision # 194247 became final without claimant having filed a request for hearing. On May 9, 2021, claimant filed late requests for hearing on decisions # 90721 and 194247. On June 2, 2021, ALJ Kangas issued Order No. 21-UI-167893 dismissing claimant's request for hearing on decision # 90721 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by June 16, 2021. Also on June 2, 2021, ALJ Kangas issued Order No. 21-UI-167891, dismissing claimant's request for hearing on decision # 194247 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by June 16, 2021.

On June 7, 2021, claimant filed a timely response to the appellant questionnaires. ALJ Kangas reviewed claimant's response, and on August 23, 2021 issued Order No. 21-UI-173140, canceling Order No. 21-UI-167893 and re-dismissing claimant's late request for hearing, leaving decision # 90721 undisturbed. Also on August 23, 2021, ALJ Kangas issued Order No. 21-UI-173138, canceling Order No. 21-UI-167891 and re-dismissing claimant's late request for hearing, leaving decision # 194247 undisturbed.

On September 7, 2021, claimant filed timely applications for review of Orders No. 21-UI-173140 and 21-UI-173138 with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-173140 and 21-UI-173138. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0734 and 2021-EAB-0733).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument filed with their application for review of Order No. 21-UI-173140 because claimant did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). EAB considered claimant's written argument filed with their application for review of Order No. 21-UI-173138 when reaching this decision.

EVIDENTIARY MATTER: The ALJ admitted claimant's response to the appellant questionnaires in both cases as Exhibit 3 but failed to mark it in each case. *See* Order No. 21-UI-173140 at 1; Order No. 21-173138 at 1. As a clerical matter, EAB identified the appellant questionnaire responses in each case and marked them as Exhibit 3.

FINDINGS OF FACT: (1) On December 24, 2019, the Department mailed decision # 90721 to claimant's address on file with the Department. Decision # 90721 stated, "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 January 13, 2020." Decision # 90721 also included three telephone numbers, a fax number, and a P.O. box address for use in contacting the Department.

(2) On December 26, 2019, the Department mailed decision # 194247 to claimant's address on file with the Department. Decision # 194247 stated, "To be timely, any appeal from this decision must be filed on or before JANUARY 15, 2020." (emphasis in original).

CONCLUSION AND REASONS: Claimant's late requests for hearing on decisions # 90721 and 194247 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 deadline for claimant to file a timely request for hearing on decision # 90721 expired on January 13, 2020. Because claimant's request for hearing on decision # 90721 was not filed until May 9, 2021, the request for hearing was late. The deadline for claimant to file a timely request for hearing on decision # 194247 expired on January 15, 2020. Because claimant's request for hearing on decision # 194247 was not filed until May 9, 2021, the request for hearing was late.

Claimant's appellant questionnaire responses suggest that claimant filed late requests for hearing not because they wished to appeal decisions # 90721 and 194247 specifically, but rather because they desired to "appeal[] the dates [they] got denied [benefits] [for] the weeks 04/10/21 thru 05/08/21." Exhibit 3 at 7; Exhibit 3 at 4. The responses reflect that many months after decisions # 90721 and 194247 became final in January 2020, claimant made claims for benefits for five weeks during April and May 2021. Claimant was not paid by the Department for those weeks, experienced difficulty contacting the Department by telephone to inquire why those weeks were denied, and then filed their late requests for hearing for decisions # 90721 and 194247 in an effort to appeal the weeks in April and May 2021

that were denied. Exhibit 3 at 7, 9; Exhibit 3 at 4-5. It is unclear from the record on review why Claimant was denied benefits for the weeks they claimed in April and May 2021. The denial of benefits for those weeks may have resulted from decisions # 90721 and 194247, because those decisions concluded that claimant was disqualified from receiving benefits until they earned four times their weekly benefit amount, and that claimant was liable to serve a four-week penalty disqualification from future benefits.

In any event, claimant did not establish that factors beyond their reasonable control prevented them from filing timely hearing requests with respect to either decision # 90721 or decision # 194247. The exact dates on which claimant received the administrative decisions are unknown. However, claimant did not dispute receiving the decisions or otherwise rebut the presumption that they were received in the regular course of the mail. OAR 137-003-0520(10) (January 31, 2012) (“Documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary.”); *see also* ORS 40.135(1)(q). Decisions # 90721 and 194247 advised claimant that January 13, 2020 and January 15, 2020 were the respective deadlines for filing timely appeals on the decisions. Claimant did not provide an explanation in their appellant questionnaire responses for why they failed to file requests for hearing on the decisions in a timely manner. To the extent that claimant decided to wait until they were denied benefits for the weeks they claimed in April and May 2021 to appeal, the denials did not prevent claimant from filing requests for hearing by the respective January 13, 2020 and January 15, 2020 deadlines.

To the extent that claimant’s failure to file timely hearing requests was the result of a mistake on claimant’s part in that they waited until they were denied benefits for the weeks they claimed in April and May 2021 to appeal, claimant did not show that the mistake was 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.

For the above reasons, claimant’s late requests for hearing on decisions # 90721 and 194247 are dismissed.

DECISION: Order No. 21-UI-173140 and 21-UI-173138 are affirmed. Decisions # 90721 and 194247 remain undisturbed.

D. Hettle and A. Steger-Bentz;
S. Alba, not participating.

DATE of Service: September 27, 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 weeks ending September 4, 2021 and prior** as long as you were not eligible for other benefits during that time, and were unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA was an unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic. The program ended on September 4, 2021.

Visit <https://unemployment.oregon.gov> for more information, or to contact the Oregon Employment Department using the “Contact Us” form. You can also call 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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 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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