

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0336

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On February 7, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain unemployment insurance benefits, and assessing an overpayment of \$3,276.00 that claimant was required to repay to the Department, a \$491.40 monetary penalty, and a 48 week penalty disqualification from future benefits (decision # 193845). On February 27, 2019, decision # 193845 became final without claimant having filed a request for hearing. On October 6, 2021, claimant filed a late request for hearing on decision # 193845. ALJ Kangas considered claimant's request, and on December 27, 2021 issued Order No. 21-UI-182752, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 10, 2022. On January 16, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-182752 with the Employment Appeals Board (EAB). On March 15, 2022, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding this matter because claimant's questionnaire response was late. This matter comes before EAB based upon claimant's January 16, 2022 application for review of Order No. 21-UI-182752.

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 response to the appellant questionnaire and a statement attached thereto, 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 February 7, 2019, the Department served decision # 193845 to claimant's address on file with the Department. Decision # 193845 instructed claimant to review an enclosed appeal rights form and stated, "To be timely, any appeal from this decision must be filed on or before February 27, 2019." Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Claimant's late request for hearing 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. There is a presumption that a letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(1)(q).

On February 7, 2019, the Department served notice of administrative decision # 193845 to claimant's address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on decision # 193845 was February 27, 2019. Claimant did not file a request for hearing on decision # 193845 until October 6, 2021. As such, claimant's request for hearing was late.

Claimant did not state in their appellant questionnaire response when they received a copy of decision # 193845. In light of this omission and because the record does not otherwise suggest that they may have faced some delay in having received it, claimant is presumed to have received decision # 193845 in the regular course of the mail. *See* ORS 40.135(1)(q).

Claimant did not indicate on their appellate questionnaire response why they did not request a hearing on decision # 193845 prior to the February 27, 2019 deadline. EAB Exhibit 1 at 2. On a statement attached to the appellant questionnaire response, claimant stated that after the Department began to garnish their wages (presumably based on their findings in decision # 193845), claimant decided to pay off the remaining balance of \$800. EAB Exhibit 1 at 4. Claimant believed that by paying off this balance, claimant "wouldn't have any problems in the future if [they] needed to file [for unemployment insurance benefits] again." EAB Exhibit 1 at 4. However, when claimant subsequently attempted to file a claim for benefits, the Department denied their claim and told claimant they were "punished from receiving unemployment for five years or 48 weeks of filing for weekly benefits." EAB Exhibit 1 at 4-5. Claimant subsequently filed their late request for hearing on October 6, 2021.

It is inferred from these statements that although claimant was aware of their responsibility to repay monies owed pursuant to decision # 193845, they were unaware that decision # 193845 also disqualified them from 48 weeks of future benefits. Furthermore, it is inferred that had claimant been aware of the 48-penalty week assessment, they would have filed their request for hearing prior to the February 27, 2019 deadline. However, claimant's responses on the appellant questionnaire do not show that they were delayed in filing the request for hearing prior to the February 27, 2019 deadline due to factors beyond their control. Further, although claimant's failure to file a timely request for hearing was likely the result of a mistake on claimant's part, claimant did not show that it was an "excusable mistake" within the meaning of the administrative rules because it did 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.

Claimant has therefore failed to establish good cause to extend the filing deadline beyond February 27, 2019 and their late request for hearing on decision # 193845 is dismissed.

DECISION: Order No. 21-UI-182752 is affirmed.

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

DATE of Service: March 24, 2022

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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