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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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<p>EMPLOYMENT APPEALS BOARD DECISION 2023-EAB-0545</p>
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Late Application for Review Dismissed

PROCEDURAL HISTORY: On July 26, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was denied benefits beginning July 5, 2020 because he quit working for the employer without good cause (decision # 131425). On July 28, 2021, the Department served notice of an administrative decision based in part on decision # 131425, concluding that claimant willfully failed to report his work separation from the employer to obtain benefits and received \$9,630 in benefits that he must repay, assessing a \$1,174.50 monetary penalty, and disqualifying claimant for 49 weeks of future benefits. On August 16, 2021, decision # 131425 became final without claimant having filed a request for hearing. On August 17, 2021, the July 28, 2021 administrative decision became final without claimant having filed a request for hearing. On March 1, 2022, the Department served notice of an administrative decision denying claimant's request for a waiver of the overpayment assessed in the July 28, 2021 administrative decision (decision # 85657). On March 21, 2022, decision # 85657 became final without claimant having filed a request for hearing.

On February 27, 2023, claimant filed a late request for hearing on decision # 131425, the July 28, 2021 administrative decision, and decision # 85657. ALJ Kangas considered claimant's request, and on April 12, 2023 issued Orders No. 23-UI-221911, 23-UI-221909 and 23-UI-221907, dismissing claimant's request for hearing on decision # 131425, the July 28, 2021 administrative decision, and decision # 85657 as late, subject to claimants' right to renew the request by responding to an appellant questionnaire by April 26, 2023. On May 2, 2023, Orders No. 23-UI-221911, 23-UI-221909 and 23-UI-221907 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On May 8, 2023, claimant filed a late response to the appellant questionnaire and a late application for review of Orders No. 23-UI-221911, 23-UI-221909 and 23-UI-221907 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-221911, 23-UI-221909 and 23-UI-221907. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2023-EAB-0545, 2023-EAB-0546 and 2023-EAB-0547).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant’s late response to the appellant questionnaire claimant submitted with his late application for review, 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(s) will remain in the record.

WRITTEN ARGUMENT: EAB received a written argument from claimant on May 19, 2023. EAB did not consider the argument because it is not relevant and material to EAB’s determination of whether claimant’s late application for review of Orders No. 23-UI-221911, 23-UI-221909 and 23-UI-221907 should be allowed. *See* OAR 471-041-0090 (May 13, 2019).

FINDING OF FACT: Order No. Orders No. 23-UI-221911, 23-UI-221909 and 23-UI-221907, mailed to claimant on April 12, 2023, stated, “You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed.” Orders No. 23-UI-221911, 23-UI-221909 and 23-UI-221907 at 2. Order No. 23-UI-221911 stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before May 2, 2023 to be timely.” Orders No. 23-UI-221909 and 23-UI-221907 stated on their Certificates of Mailing, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than May 2, 2023.”

CONCLUSIONS AND REASONS: Claimant’s late application for review of Orders No. 23-UI-221911, 23-UI-221909 and 23-UI-221907 is dismissed.

An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Orders No. 23-UI-221911, 23-UI-221909 and 23-UI-221907 was due May 2, 2023. Because claimant did not file his application for review until May 8, 2023, the application for review was late. Claimant submitted a response to the appellant questionnaire with his application for review. EAB Exhibit 1. However, the response did not include a written statement explaining why the application for review was late. Accordingly, claimant did not show good cause for the late application for review, and the late application for review is dismissed.

DECISION: The application for review filed May 8, 2023 is dismissed. Orders No. 23-UI-221911, 23-UI-221909 and 23-UI-221907 remain undisturbed.

D. Hettle and A. Steger-Bentz;

S. Serres, not participating.

DATE of Service: May 24, 2023

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 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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