

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0059

Late Application for Review Allowed
Order No. 18-UI-121619 Reversed & Remanded

PROCEDURAL HISTORY: On September 19, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from August 5 through 11 and August 26 through September 1, 2018 (decision # 151815). On October 9, 2018, decision # 151815 became final without claimant having filed a request for hearing. On December 18, 2018, claimant filed a late request for hearing. On December 20, 2018, ALJ Kangas issued Order No. 18-UI-121619, dismissing claimant's request for hearing as untimely without a showing of good cause, subject to her right to renew her request by filing a response to an appellant questionnaire by January 3, 2019. On January 9, 2019, Order No. 18-UI-121619 became final without claimant having filed a response to the appellant questionnaire with the Office of Administrative Hearings (OAH) or an application for review of Order No. 18-UI-121619 by the Employment Appeals Board (EAB). On January 10, 2019, claimant filed, by mail, a late response to the appellant questionnaire with OAH and a late application for review of Order No. 18-UI-121619 by EAB. On January 14, 2019, ALJ Kangas notified claimant that because the response to the appellant questionnaire was late, OAH would not consider it or issue another Order regarding the matter, and that Order No. 18-UI-121619 remained in effect.

Claimant submitted her response to the appellant questionnaire with her application for review. EAB marked and received claimant's response into evidence as EAB Exhibit 1 under OAR 471-041-0090(1) (October 29, 2006), under which exhibits offered but not received into the hearing record may be received into evidence as necessary to complete the record. EAB considered EAB Exhibit 1 when reaching this decision. Any party that objects to our doing so 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(3). Unless such objection is received and sustained, EAB Exhibit 1 will remain in the record.

FINDINGS OF FACT: (1) On January 4, 2019, claimant repeatedly attempted to fax a late response to the appellant questionnaire and timely application for review of Order No. 18-UI-121619 to OAH's fax number. However, claimant was unsuccessful because there was "No answer" at OAH's fax number. EAB Exhibit 1. On January 8, 2019, claimant again attempted to fax her response to the appellant

questionnaire and timely application for review of Order No. 18-UI-121619 to OAH's fax number. However, claimant was unsuccessful because there again was no answer at OAH's fax number. EAB Exhibit 1.

(2) On January 10, 2019, claimant mailed her response to the appellant questionnaire and late application for review of Order No. 18-UI-121619 to OAH. EAB Exhibit 1.

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 18-UI-121619 is allowed. Order No. 18-UI-121619 is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 151815 should be allowed and, if so, the merits of that decision.

Late Application for Review. An application for review is timely if it is filed within 20 days of the date that OAH mailed the Order for which review is sought. OAR 471-041-0070(1) (March 20, 2014). The 20 day filing period may be extended a "reasonable time" upon a showing of "good cause." OAR 471-041-0070(2). "Good cause" means that factors or circumstances beyond the applicant's reasonable control prevented timely filing OAR 471-040-0070(2)(a). A "reasonable time" is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0050(2)(b).

Here, claimant repeatedly attempted to file a timely application for review of Order No. 18-UI-121619 on January 4 and 8, 2019, but was prevented from doing so because there was no answer at OAH's fax number, which was a factor or circumstance beyond claimant's reasonable control. Claimant filed a late application for review by mail within a reasonable time on January 10, 2018, only two days after she last was prevented from filing timely application for review by fax. Claimant therefore had good cause for filing her application for review late, and filed her application for review within a reasonable time. Claimant's late application for review of Order No. 18-UI-121619 is allowed.

Late Request for Hearing. 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 it 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.

In her response to the appellant questionnaire, claimant asserted that she failed to file a request for hearing on decision # 151815 until December 18, 2018 for various reasons, including being away from her residence for work and personal issues during the relevant time period, and several failed attempts to speak with a Department representative for guidance on requesting a hearing. EAB Exhibit 1. Claimant's response to the appellant questionnaire suggests that her failure to file a timely request for hearing may have been due to an excusable mistake or factors beyond her reasonable control, and that she may have filed her late request for hearing within a reasonable time. However, further inquiry is needed into the facts necessary for a determination of those issues. Order No. 18-UI-121619 therefore is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 151815 should be allowed and, if so, the merits of that decision.

DECISION: The late application for review filed January 10, 2019 is allowed. Order No. 18-UI-121619 is set aside, and this matter remanded for further proceedings consistent with this order.

J. S. Cromwell and D. P. Hettle;
S. Alba, not participating.

DATE of Service: January 22, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-121619 or return this matter to EAB. Only a timely application for review of the subsequent Order will cause this matter to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have 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 Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.