

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0385

Applications for Review Dismissed¹

FINDINGS OF FACT AND PROCEDURAL HISTORY: (1) On February 27, 2008, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 133606). On February 28, 2008, the Department served notice of another administrative decision assessing a \$6,764 overpayment and 26 penalty weeks (the overpayment decision).

(2) When the Department issued decision # 133606 and the overpayment decision, claimant was actively filing weekly claims for benefits since October 2017, and had not changed his address of record with the Department. He last filed a weekly claim for benefits during the week ending March 15, 2018, claiming the previous week, which ended March 8, 2018 (week 10-18).²

(3) On March 18, 2008, decision # 133606 became final without claimant having filed a timely request for hearing. On March 19, 2008 the overpayment decision became final without claimant having filed a timely request for hearing.

(4) Seven years later, on March 31, 2015, claimant changed his address of record with the Department and filed late requests for hearings on both administrative decisions. On April 7, 2015, ALJ Kangas issued Order Nos. 15-UI-36387 and 15-UI-36389, dismissing claimant's late requests for hearings subject to claimant's right to renew the requests by responding to appellant questionnaires by April 21, 2015. On April 22, 2015, one day late, claimant filed his responses to the appellant questionnaires to the

¹ Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders 15-UI-36387 and 15-UI-36389. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0384 and 2019-EAB-0385).

² We take notice of claimant's claim history and the week in which he last filed a claim for benefits (listed in finding of fact #2), and the date upon which he changed his address of record with the Department (listed in finding of fact #4), all of which is contained in Employment Department records. 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) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record at EAB Exhibit 1.

Employment Appeals Board (EAB). Claimant included with the questionnaires signed application for review forms requesting review of the cases by EAB.

(5) On April 27, 2015, EAB received claimant's questionnaires and application for review forms. EAB mailed letters to claimant at his address of record stating that because further proceedings were necessary at the Office of Administrative Hearings (OAH), EAB was sending the cases to OAH. The letter also stated, "please note that we [EAB] will take no further action in your case" and "**If you disagree with the decision you receive from the Office of Administrative Hearings, you have the right to appeal the decision to the Employment Appeals Board. However, you must file an application for review.**" (Emphasis in original.) EAB then forwarded the questionnaires and applications for review to OAH for further proceedings.

(6) OAH reviewed claimant's questionnaire responses, and on May 4, 2015 ALJ Kangas mailed him two letters at his address of record with the Department. The letters stated that the questionnaire responses were late, and "This means the order mailed April 7, 2015 remains in effect. If a timely request for review of that order was filed with the Employment Appeals Board, that review process remains unaffected." Nothing happened with claimant's case for approximately four more years.

(7) On April 10, 2019, claimant sent an email to the Department requesting a hearing about the overpayment case (and, necessarily, the voluntary leaving case that caused the overpayment) because he was being garnished. Claimant's email is construed as late applications for review in both of these cases with the Employment Appeals Board (EAB). In the application, claimant wrote that he was filing it because he was being garnished, stating, "I'm not sure what happened to cause this . . . At the time of this I had went to jail years ago & I had changed my mailing address & didn't receive a lot of mail . . ."

CONCLUSIONS AND REASONS: The applications for review are dismissed.

ORS 657.270(6) required the applications for review to be filed no later than April 27, 2015. Claimant filed the applications for review under review on April 10, 2019, almost four years later. Claimant's applications for review were therefore filed late.³

The deadline for filing a late application for review 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" means "seven days after the circumstances that prevented timely filing ceased to exist." OAR 471-041-0070(2)(b).

Claimant wrote on his application for review that he was not sure what happened with his cases, and suggested that he might have filed late applications for review in these cases because he had gone to jail, changed his address, and did not receive a lot of mail. Claimant did not indicate when he went to jail, changed addresses, or why he thought he did not receive a lot of his mail. In the absence of such details, we cannot determine by a preponderance of the evidence that those events were legally significant in

³ Claimant's April 27, 2015 application for review forms were not valid or actionable applications for review because there were matters still pending at OAH as a matter of first impression at the time he filed them.

this case, or caused claimant to file late applications for review. Claimant did not show good cause for extending the filing deadlines in these cases for the reasons he listed in the application for review.

Reviewing the record, it appears at one time that claimant did in fact timely file application for review forms in both of these cases. Given the procedural posture of the cases at the time of those filings, however, EAB did not have jurisdiction to review the cases and referred both to OAH. EAB notified claimant at the time that EAB would take no further action in his cases, and that he would have to file new applications for review of any additional OAH decisions in order to have EAB review the cases. OAH subsequently notified claimant, however, that EAB *would* review his cases if he had filed applications for review in them, which he had done. The conflicting information claimant received from EAB and OAH about whether or not EAB would review these cases might well have amounted to a factor or circumstance beyond claimant's reasonable control that prevented him from filing timely and valid applications for review in these cases. That conflicting information in 2015 therefore might well have amounted to good cause.

Even though we have found that claimant might have had good cause justifying late filings in these cases, claimant's late applications for review are still denied because claimant did not prove that he filed his valid applications for review within a "reasonable time" after the circumstances that prevented his timely filing ceased to exist. Claimant stated that he filed applications when he did because he was being garnished due to the debt he owed to the Department as a result of these cases. Claimant did not include any information about when the garnishment began, or when he found out about the garnishment. Nor is that information apparent in the Employment Department records available to EAB. In the absence of information about when claimant's garnishment began, claimant has not shown by a preponderance of the evidence that he filed his late applications for review within the seven-day "reasonable time" period after finding out about the garnishments.

Even if we had found good cause to allow claimant's late applications for review in these cases, or found that claimant's April 2015 invalid applications for review had been valid, the outcome of these cases would remain the same and we would still have upheld Order Nos. 15-UI-36387 and 15-UI-36389 for the following reasons. 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. Claimant's requests for hearing in these cases were filed more than seven years late.

ORS 657.875 provides that the 20-day deadline may be extended a "reasonable time" upon a showing of "good cause." The version of OAR 471-040-0010 in effect at the time of claimant's late requests for hearing were filed provided that "good cause" included factors beyond an applicant's reasonable control, and defined "reasonable time" as seven days after those factors ceased to exist.

Claimant stated in his April 2015 questionnaires that he filed late requests for hearing in these cases because he had not received the administrative decisions after moving and going to jail for six months, and did not realize that he had been denied benefits until "recently." However, at the time the administrative decisions in these cases were issued, claimant had been claiming weekly benefits since October 2017. It is therefore unlikely that he had been to jail at the time the decisions were issued or even when they became final, because he was consistently filing weekly claims during the weeks the decisions in these cases were issued and for additional weeks after they were issued, and individuals who are in jail generally do not have the kind of access to phones that was necessary to file claims for

benefits in 2008.⁴ If claimant did not receive the administrative decisions in this case because he moved while filing weekly benefit claims but did not change his mailing address with the Department, it was claimant's obligation to keep the Department informed about his accurate mailing address while he was claiming benefits. It was more likely than not within his reasonable control to do so. He therefore would not have established good cause for filing late requests for hearing in these cases because he was in jail or had moved.

In sum, claimant did not file timely applications for review in these cases, and did not establish that he filed late applications for review within the seven-day "reasonable time" period after the circumstances that prevented a timely filing ceased to exist. Even if he had, claimant could not on these evidentiary records have shown good cause for filing his requests for hearing seven years late, and his late requests for hearing would therefore also have been subject to dismissal.

DECISION: The applications for review filed April 10, 2019 are dismissed. Order Nos. 15-UI-36387 and 15-UI-36389 remain undisturbed.

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

DATE of Service: April 29, 2019

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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⁴ To file a weekly claim for benefits in 2008 individuals generally had to either use a paper form, call a Department call center to speak with an individual, or file using the Department's automated telephone claim line. There is nothing suggesting claimant filed by mail using the forms, or that he would have had access to the forms while in jail. Both remaining filing methods required the individual to have the type of access to a telephone that most incarcerated individuals generally do not have. For example, access to a phone that would not require the user to call collect, and access to a phone for a long enough period of time – up to ten minutes to file an automated claim, and up to an hour or more to speak with an employee given the Department's call volumes and delays during the Great Recession. It is unlikely that an individual who is in jail could successfully complete a weekly filing. These findings are based upon generally cognizable facts, our specialized knowledge, and reasonable inferences drawn therefrom. Any party that objects to our taking notice of the facts underlying the findings 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) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.



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 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 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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