

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0154

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On August 1, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not able to work during the weeks including June 23 through July 20, 2019 and was ineligible for benefits for those weeks and until the reason for the denial had ended (decision # 120153). Decision # 120153 stated that the deadline for claimant to appeal was August 21, 2019. The Department mailed decision # 120153 to claimant at her address on file with the Department. On August 21, 2019, decision # 120153 became final without claimant having filed a timely request for hearing.

On November 18, 2019, the Department served notice of another administrative decision, based upon decision # 120153 assessing a \$384 overpayment that claimant was required to repay (decision # 104332). Decision # 104332 stated that for an appeal of decision # 104332 to be timely, it had to be filed on or before December 9, 2019. The Department mailed decision # 104332 to claimant at her address on file with the Department. On December 9, 2019, decision # 104332 became final without claimant having filed a timely request for hearing.

On December 17, 2019, claimant filed a late request for hearing on decisions # 120153 and 104332 with the Office of Administrative Hearings (OAH). Claimant's December 17, 2019 late request for hearing stated, "I am requesting a late hearing...as I received a decision without the ability to request a hearing. I have discovered a late hearing request by calling the office. I have let them know I have never received another paper from unemployment since I stopped claiming weekly. I am in a domestic violence situation and my PO Box receives mail 3 weeks late, sometimes more."

On December 26, 2019, ALJ Kangas issued Order No. 19-UI-141756, dismissing claimant's request for hearing on decision # 120153 as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 9, 2020. Order No. 19-UI-141756 also notified claimant that she could appeal the order by filing a request for review with the Employment Appeals Board (EAB) no later than January 15, 2020. On December 26, 2019, ALJ Kangas also issued Order No. 19-UI-141754, dismissing claimant's request for hearing on decision # 104332 as late without a showing of good cause, subject to claimant's right to renew the request by responding to

an appellant questionnaire by January 9, 2020. Order No. 19-UI-141754 also notified claimant that she could appeal the order by filing a request for review with EAB no later than January 15, 2020.

On February 7, 2020, claimant filed a late response to the appellant questionnaire and a late application for review of Order No. 19-UI-141756 with OAH. On February 13, 2020, ALJ Kangas mailed claimant a letter stating that because claimant's response to the appellant questionnaire was filed late, it would not be considered, no other order would be issued, and Order No. 19-UI-141756 remained in effect. On February 7, 2020, claimant also filed a late response to the appellant questionnaire and a late application for review of Order No. 19-UI-141754 with OAH. On February 13, 2020, ALJ Kangas mailed claimant a letter stating that because claimant's response to the appellant questionnaire was filed late, it would not be considered, no other order would be issued, and Order No. 19-UI-141754 remained in effect.

This matter is before the Employment Appeals Board (EAB) based upon claimant's February 7, 2020 late applications for review of Orders No. 19-UI-141756 and 19-UI-141754.

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-141756 and 19-UI-141754. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0153 and 2020-EAB-0154, respectively).

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 response to the appellant questionnaire, which 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.

CONCLUSIONS AND REASONS: Claimant's applications for review should be dismissed.

An application for review is timely if it is filed within 20 days of the date that OAH mailed the decision 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).

On February 7, 2020, claimant filed applications for review of Orders No. 19-UI-141756 and 19-UI-141754 by mail, as evidenced by the postmark affixed to the envelope in which claimant mailed them by the United States Postal Service.¹ ORS 657.270(6) and ORS 657.270(7)(b) required the applications for review to be filed no later than January 15, 2020. Claimant's applications for review therefore were late.

¹ OAR 471-041-0065(1) provides, in relevant part:

(1) Filing dates shall be determined as follows:

In her response to the appellant questionnaire, which claimant signed on January 30, 2020, claimant explained that she had received the appellant questionnaire paperwork on January 28, 2020, asserting, “Both original paperwork and this paperwork was delayed due to post office not giving my mail in timely manner.” EAB Exhibit 1. Claimant did not specifically identify the circumstances that prevented her from filing timely applications for review of Orders No. 19-UI-141756 and 19-UI-141754. However, it may reasonably be inferred from the record and claimant’s questionnaire responses that claimant attributed the delay to the United States Postal Service, although she failed to offer any information concerning any steps she had taken to address the post office delays which she discovered no later than December 17, 2019, when she filed her late request for hearing.

Even assuming that claimant demonstrated “good cause”, that factors or circumstances beyond the applicant’s reasonable control prevented the timely filing of her applications for review by the January 15, 2020 deadline, the filing deadline could only be extended a “reasonable time,” or seven days, after those circumstances ceased to exist. Claimant asserted in her questionnaire response that she received the paperwork on January 28, 2020. The seven-day “reasonable time” period therefore expired on February 4, 2020. Claimant did not file her late applications for review until February 7, 2020. Because even under circumstances most favorable to claimant, claimant has not satisfied the “reasonable time” requirement, her late applications for review must be dismissed.

DECISION: The applications for review of Orders No. 19-UI-141756 and 19-UI-141754, filed February 7, 2020, are dismissed. Orders No. 19-UI-141756 and 19-UI-141754 remain undisturbed.

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

DATE of Service: February 27, 2020

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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(b) If mailed, the filing date is the date that the document is deposited in the United States mail in an envelope with first class postage, as evidenced by the postmark affixed to the envelope by the United States Postal Service.



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 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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