

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0547

Late Application for Review Dismissed

PROCEDURAL HISTORY: On April 13, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was disqualified from receiving benefits effective March 22, 2020, and until the reason for the denial had ended, because claimant received retirement pay during the weeks claimed that was equal to or more than claimant's weekly benefit amount (decision # 80716). Claimant filed a timely request for hearing. On May 14, 2020, ALJ Monroe conducted a hearing, and on May 18, 2020 issued Order No. 20-UI-149938, affirming the Department's decision and concluding that claimant was ineligible for benefits for the weeks including March 22 through May 9, 2020 (weeks 13-20 through 19-20). On June 8, 2020, Order No. 20-UI-149938 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On July 27, 2020, claimant filed a late application for review of Order No. 20-UI-149938 with EAB.

FINDING OF FACT: Order No. 20-UI-149938 stated that any appeal of the order was required to be filed within 20 days of the date the order was mailed to be timely. Order No. 20-UI-149938 at 3.

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 20-UI-149938 is 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).

The application for review of Order No. 20-UI-149938 was due June 8, 2020. Because claimant did not file his application for review until July 27, 2020, the application for review was late. Claimant's application for review included, in relevant part, the following written statement:

During my [hearing] on May 14, I presented my case....This issue has to do with whether I am eligible for Benefits as a result of receiving PERS retirement benefits. I agreed that ORS 657.205(1) precludes me from receiving regular OREGON UI benefits, but that I argued that I would be eligible for benefits under the FEDERAL CARES Act because the CARES Act covers people who could not receive STATE benefits and thus I should receive benefits....When I presented my case, the Employment Division representative...said that I should be covered under PUA and that I should apply (which I did the same day as the hearing). He said I should have response with about 3 weeks.... I was waiting to hear from the PUA program as to whether I was covered to file my application for review.

Claimant's Late Application for Review at 1-2. Claimant's written statement did not state that he did not receive Order No. 20-UI-149938, that he received it late or that he was unaware of the deadline for filing a timely application for review of the order. Instead, it explained that claimant "was waiting to hear from the PUA program as to whether I was covered to file my application for review." Although the Department's inaction on his PUA claims may have been a circumstance beyond claimant's reasonable control, that inaction or circumstance did not prevent him from filing an application for review of Order No. 20-UI-149938 on or before the June 8, 2020 deadline. Because claimant's written statement did not describe circumstances beyond his reasonable control that prevented a timely filing, he did not show good cause for the late application for review. Accordingly, claimant's late application for review is dismissed.¹

DECISION: The application for review filed July 27, 2020 is dismissed. Order No. 20-UI-149938 remains undisturbed.

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

DATE of Service: August 6, 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.

¹ The issue over which EAB had jurisdiction in this matter originated in the Department's denial of unemployment insurance benefits to claimant because he was receiving retirement pay, when calculated on a weekly basis, that was greater than his weekly benefit amount as set forth in the Department's April 13, 2020 decision. Based upon claimant's request for hearing, the matter was set for a hearing, and the issue noticed for that hearing was "Whether claimant is receiving, will receive, or has received a pension, retirement pay or similar periodic payment which would reduce or eliminate benefits otherwise due. (ORS 657.205 and OAR 471-030-0020.)" The ALJ held a hearing, at which those issues were developed. EAB's authority is to "perform de novo review on the record." ORS 657.275(2). That means that EAB reviews the record, finds its own facts based upon evidence in the record, and reaches its own conclusions based upon the application of the relevant law to the facts as developed on the record. Accordingly, even if claimant had timely requested review of Order No. 20-UI-149938, EAB would not have had jurisdiction to address the issue of claimant's entitlement to benefits under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

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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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