

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0024

Late Applications for Review Allowed
Orders No. 17-UI-97824 and 17-UI-97831 Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On October 30, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective December 4, 2016 (decision # 131648). On October 31, 2017, the Department served notice of an administrative decision based in part on decision # 131648, concluding that claimant willfully made misrepresentations and failed to report material facts to obtain benefits, and assessing a \$4,522 overpayment, a \$904.40 monetary penalty, and a 35-week penalty disqualification from future benefits (decision # 204520). On November 20, 2017, decisions # 131648 and # 204520 both became final without claimant having filed timely requests for hearing.

On November 27, 2017, claimant filed late requests for hearing on decisions # 131648 and # 204520. On November 29, 2017, ALJ Kangas issued Orders No. 17-UI-97824 and 17-UI-97831, dismissing claimant's late requests for hearing on decisions # 131648 and # 204520, subject to claimant's right to renew the requests by responding to an appellant questionnaire by December 13, 2017. On December 16, 2017, claimant submitted a late appellant questionnaire response and a timely application for review to the Office of Administrative Hearings (OAH). OAH did not forward claimant's application for review to the Employment Appeals Board (EAB). On December 19, 2017, Orders No. 17-UI-97824 and 17-UI-97831 became final without review by EAB. On December 20, 2017, ALJ Kangas issued 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 Orders No. 17-UI-97824 and 17-UI-97831 would remain in effect. On January 2, 2021, claimant filed late applications for review of Orders No. 17-UI-97824 and 17-UI-97831 with EAB, which OAH forwarded to EAB on January 9, 2021. This matter comes before EAB upon claimant's late applications for review filed on January 2, 2021.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 17-UI-97824 and 17-UI-97831. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0024 and 2021-EAB-0023).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's appellant questionnaire response to Order No. 2017-UI-75095, 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 will remain in the record.

CONCLUSIONS AND REASONS: Claimant's late applications for review are allowed. Claimant is entitled to hearings to determine whether she had good cause to file late requests for hearing on decisions # 131648 and # 204520 and, if so, the merits of those decisions.

Late Applications 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. 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).

OAH mailed Orders No. 17-UI-97824 and 17-UI-97831 on November 29, 2017. Claimant filed her applications for review of those orders on January 2, 2021, more than three years later. The applications for review are therefore late. However, an application for review may be filed "to EAB, or any office of the Employment Department, including OAH." OAR 471-041-0060(2) (May 13, 2019). Because claimant originally submitted an application for review within 20 days of November 29, 2017, she had no reason to suspect that further action was required on her part. The fact that OAH failed to forward claimant's original application for review therefore was a circumstance beyond claimant's reasonable control. That circumstance ceased to exist once OAH forwarded claimant's January 2, 2021 late applications for review to EAB. Claimant therefore had good cause for filing late applications for review of Orders No. 17-UI-97824 and 17-UI-97831, and filed her late applications for review within a reasonable time. Claimant's late applications for review of Orders No. 17-UI-97824 and 17-UI-97831 therefore are 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 the decision 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.

On claimant's appellant questionnaire response, claimant indicated that she first received the administrative decisions on November 27, 2017 and "called as soon as [claimant] received the decision[s]" that day. EAB Exhibit 1 at 2. However, claimant also indicated on the questionnaire response that she did not file a request for hearing by the timely filing deadline because the "phone agent confirmed return mail." EAB Exhibit 1 at 1. From claimant's responses, it is unclear whether she actually received copies of the decisions or whether she was informed of the decisions by some other

means. If claimant *did* first receive physical copies of the decisions on November 27, 2017, claimant has not explained why she did not receive the decisions until nearly a month after the decisions were mailed.¹ If claimant *did not* receive physical copies of the decisions but learned about them by some other means, claimant has not explained how and when she first learned about the decisions and what circumstances, if any, prevented her from filing requests for hearing earlier than November 27, 2017.

Without this information, a determination as to whether claimant had good cause to file late requests for hearing on decisions # 131648 and # 204520 cannot be reached. Orders No. 17-UI-97824 and 17-UI-97831 therefore are reversed, and this matter remanded for a hearing on whether claimant had good cause for filing late requests for hearing on decisions # 131648 and # 204520 and, if so, the merits of those decisions.

DECISION: Orders No. 17-UI-97824 and 17-UI-97831 are set aside, and this matter remanded for further proceedings consistent with this order.

S. Alba and D. P. Hettle.

DATE of Service: January 21, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 17-UI-97824 and 17-UI-97831 or return this matter to EAB. Only a timely application for review of the subsequent orders will cause this matter to return to EAB.

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¹ EAB takes notice of the generally cognizable fact that first class domestic mail sent through the U.S. Postal Service is estimated to take 1-3 business days after mailing to be delivered. See <https://www.usps.com/ship/first-class-mail.htm>



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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