

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0124

Order No. 20-UI-149322 ~ Late Application for Review Dismissed
Order No. 21-UI-161175 Affirmed ~ Request to Reopen Denied
Disqualification

PROCEDURAL HISTORY: On March 20, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged but not for misconduct, and was not disqualified from receiving unemployment insurance benefits (decision # 160416). The employer filed a timely request for hearing. On April 22, 2020, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for May 5, 2020 at 8:15 a.m. on decision # 160416. On May 5, 2020, ALJ Roberts conducted a hearing at which claimant failed to appear, and on May 6, 2020 issued Order No. 20-UI-149322, reversing decision # 160416 and concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective February 9, 2020. On May 26, 2020, Order No. 20-UI-149322 became final without claimant having filed a timely application for review with the Employment Appeals Board (EAB).

On January 19, 2021, claimant filed a late application for review of Order No. 20-UI-149322 with EAB and a late request to reopen the May 5, 2020 hearing. ALJ Kangas reviewed claimant's request to reopen the hearing, and on February 18, 2021 issued Order No. 21-UI-161175, denying claimant's request to reopen and leaving Order No. 20-UI-149322 undisturbed. On February 22, 2021, claimant filed an application for review of Order No. 21-UI-161175 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-149322 and 21-UI-161175. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0124 and 2021-EAB-0123).

FINDINGS OF FACT: (1) On May 5, 2020, ALJ Roberts conducted a hearing on decision # 160416, at which claimant failed to appear. On May 6, 2020, ALJ Roberts issued Order No. 20-UI-149322, reversing decision # 160416.

(2) Order No. 20-UI-149322, mailed to claimant on May 6, 2020, stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days

of the date this decision is mailed.” Order No. 20-UI-149322 at 4. Order No. 20-UI-149322 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before May 26, 2020 to be timely.”

(3) Order No. 20-UI-149322 also stated “If you did not appear at the hearing, you may request to reopen the hearing. These requests . . . should be filed . . . within 20 days of when the order from the hearing you missed was mailed, or else show good cause to extend the period[.]” Order No. 20-UI-149322 at 4. Claimant filed a request to reopen the May 5, 2020 hearing on January 19, 2021. January 19, 2021 was more than eight months after the May 6, 2020 mailing date of Order No. 20-UI-149322.

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 20-UI-149322 is dismissed. Order No. 21-UI-161175 is affirmed.

Late Application for Review of Order No. 20-UI-149322. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (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). 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-149322 was due by May 26, 2020. Because claimant did not file their application for review until January 19, 2021, the application for review was late. Claimant provided a written statement with the application for review. However, claimant’s written statement did not describe the circumstances that prevented claimant from filing the application for review on time. Accordingly, claimant did not show good cause for the late application for review, and claimant’s late application for review is dismissed.

Request to Reopen the May 5, 2020 Hearing. ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. The period within which a party may request reopening may be extended if the party requesting reopening has good cause for failing to request reopening within the time allowed, and acts within a reasonable time. OAR 471-040-0041(1) (February 10, 2012). “Good cause” exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant’s reasonable control. OAR 471-040-0041(2). “A reasonable time,” is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(3). The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which OAH shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time. OAR 471-040-0041(4).

Under OAR 471-040-0041(1)(b), claimant was required to file their request to reopen the May 5, 2020 hearing within 20 days of the mailing date of Order No. 20-UI-149322. The mailing date of Order No. 20-UI-149322 was May 6, 2020, and as such claimant needed to file their request to reopen on or before

May 26, 2020. Because claimant filed their request to reopen on January 19, 2021, the request was late. In their request to reopen, claimant explained that they “have records of attempting to call to handle this situation, with hold times [of] 5+ hours” and had not known about the online form on which they ultimately filed the request to reopen. Exhibit 5 at 2. Claimant’s explanation suggests that they may have delayed filing their request to reopen because they attempted to reopen the hearing by contacting the Department via phone, rather than by contacting OAH in writing per the instructions on Order No. 20-UI-149322. Although attempting to contact the Department via phone was likely the result of a mistake on claimant’s part, it was not an “excusable mistake” within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Nor did claimant offer any evidence to suggest that contacting OAH in writing by May 26, 2020 was beyond their reasonable control. More likely than not, it was within claimant’s reasonable control to read the instructions on the order and follow the instructions to contact OAH in writing. Claimant therefore failed to establish good cause to extend the filing period beyond May 26, 2020. Accordingly, claimant’s request to reopen is denied.

DECISION: The application for review filed January 19, 2021 is dismissed. Order No. 20-UI-149322 remains undisturbed. Order No. 21-UI-161175 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: March 1, 2021

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.

NOTE: This decision denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the “Contact Us” form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>.

You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need 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 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 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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