

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0125

Order No. 20-UI-157870 – Late Application for Review Dismissed
Order No. 21-UI-159830 Affirmed – Request to Reopen Denied
Disqualification

PROCEDURAL HISTORY: On October 23, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant not for misconduct, and that claimant was not disqualified from receiving unemployment insurance benefits (decision # 151007). The employer filed a timely request for hearing. On December 1, 2020, the Office of Administrative Hearings (OAH) served, by mail, notice of a telephone hearing scheduled for December 15, 2020 at 1:30 p.m. On December 15, 2020, ALJ Wyatt conducted the hearing, at which claimant failed to appear, and on December 18, 2020 issued Order No. 20-UI-157870 reversing decision # 151007 and concluding that claimant was discharged for misconduct and was disqualified from receiving benefits effective May 17, 2020. On January 7, 2021, Order No. 20-UI-157870 became final without claimant having filed a timely application for review with the Employment Appeals Board (EAB).

On January 8, 2021, claimant filed a late application for review of Order No. 20-UI-157870 with EAB and a late request to reopen the December 15, 2020 hearing. ALJ Kangas reviewed claimant's request to reopen, and on January 26, 2021, issued Order No. 21-UI-159830, denying claimant's request to reopen and leaving Order No. 20-UI-157870 undisturbed. On February 10, 2021, claimant filed an application for review of Order No. 21-UI-159830 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-157870 and 21-UI-159830. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0125 and 2021-EAB-0115).

WRITTEN ARGUMENT: Claimant submitted a written argument with their application for review of Order No. 21-UI-159830. Claimant did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information

during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB did not consider claimant's written argument when reaching the portion of this consolidated decision that pertains to Order No. 21-UI-159830.

FINDINGS OF FACT: (1) On December 15, 2020, ALJ Wyatt conducted a hearing on decision # 151007, at which claimant failed to appear. On December 18, 2020 ALJ Wyatt issued Order No. 20-UI-157870 reversing decision # 151007.

(2) Order No. 20-UI-157870, mailed to claimant on December 18, 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-157870 at 4. Order No. 20-UI-157870 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before January 7, 2021 to be timely."

(3) Order No. 20-UI-157870 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-157870 at 4. Claimant filed a request to reopen the December 15, 2020 hearing on January 8, 2021. January 8, 2021 was 21 days after the December 18, 2020 mailing date of Order No. 20-UI-157870.

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 20-UI-157870 is dismissed. Order No. 21-UI-159830 is affirmed.

Late Application for Review of Order No. 20-UI-157870. 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-157870 was due on January 7, 2021. Because claimant did not file their application for review until January 8, 2021, the application for review was late. Claimant's application for review of Order No. 20-UI-157870 did not include a written statement describing the circumstances that prevented claimant from filing the application for review by the January 7, 2021 deadline. Accordingly, claimant did not show good cause for the late application for review of Order No. 20-UI-157870, and claimant's late application for review is dismissed.

Request to Reopen the December 15, 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 471-040-0040(1)(b), claimant was required to file their request to reopen the December 15, 2020 hearing within 20 days of the mailing date of Order No. 20-UI-157870. The mailing date of Order No. 20-UI-157870 was December 18, 2020, meaning claimant needed to file their request to reopen on or before January 7, 2021 to be timely. Because claimant filed their request to reopen on January 8, 2021, claimant's request to reopen was late. Claimant did not offer any explanation for why the request to reopen was late and therefore failed to establish good cause to extend the filing period beyond January 7, 2021. Accordingly, claimant's request to reopen is denied.¹

DECISION: The application for review filed January 8, 2021 is dismissed. Order No. 20-UI-157870 remains undisturbed. Order No. 21-UI-159830 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: February 26, 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.

¹ Order No. 21-UI-159830 concluded that claimant's request to reopen was timely. Order No. 21-UI-159830 at 1. That conclusion was in error. However, in denying claimant's request to reopen and leaving Order No. 20-UI-157870 undisturbed, the Order reached the correct result. Order No. 21-UI-159830 at 3. Because the result reached by Order No. 21-UI-159830 was correct, the Order is affirmed.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymoz.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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.