

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0153

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On December 9, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective April 5, 2020 (decision # 150247). Also on December 9, 2020, the Department served notice of an administrative decision concluding that claimant was unavailable for work from April 26, 2020 through May 16, 2020 and therefore was denied benefits for that period (decision # 151652). Claimant filed timely requests for hearing on decisions # 150247 and # 151652. On January 25, 2021, ALJ Amesbury conducted hearings on decisions # 150247¹ and # 151652. On January 26, 2021, ALJ Amesbury issued Order No. 21-UI-159753, modifying decision # 150247 by concluding that claimant quit work without good cause and was subject to disqualification effective April 19, 2020. Also on January 26, 2020, ALJ Amesbury issued Order No. 21-UI-159789, affirming decision # 151652. On February 16, 2021, Orders No. 21-UI-159753 and 21-UI-159789 became final without claimant having filed a timely application for review with the Employment Appeals Board (EAB). On February 17, 2021, claimant filed late applications for review of Orders No. 21-UI-159753 and 21-UI-159789 with EAB.

EAB considered the envelope in which claimant mailed her applications for review. A copy of the envelope has been provided with these decisions.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-159753 and 21-UI-159789. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0152 and 2021-EAB-0153).

¹ The employer did not appear at the hearing on decision # 150247, although they were a party to the decision. On January 27, 2021, the employer submitted a request to the Office of Administrative Hearings to reopen the hearing. Department records show that OAH has not responded to the employer's request. EAB lacks jurisdiction to address the employer's request to reopen the decision, and therefore does not address it in this decision. Further, because the employer prevailed at the hearing despite their failure to appear, the matter presented in Order No. 21-UI-159753 is non-justiciable by EAB in response to an appeal from the employer.

FINDINGS OF FACT: (1) Order No. 21-UI-159753, mailed to claimant on January 26, 2021, 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. 21-UI-159753 at 4. Order No. 21-UI-159753 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before February 16, 2021 to be timely.”

(2) Order No. 21-UI-159789, mailed to claimant on January 26, 2021, 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. 21-UI-159789 at 4. Order No. 21-UI-159789 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before February 16, 2021 to be timely.”

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 21-UI-159753 and 21-UI-159789 are dismissed.

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 applications for review of Orders No. 21-UI-159753 and 21-UI-159789 were due by February 16, 2021. The filing date for an application for review filed by mail is the postmark date affixed to the envelope in which the application was mailed. OAR 471-041-0065(1)(b) (May 13, 2019). The postmark date on the envelope in which claimant mailed her applications for review was February 17, 2021; that date is therefore the filing date. Because claimant did not file her applications for review until February 17, 2021, one day after the date they were due, the applications for review were late.

Claimant provided a written statement with the applications for review. However, claimant’s written statement did not describe circumstances that prevented her from filing the applications for review on time. Accordingly, claimant did not show good cause for the late applications for review, and claimant’s late applications for review are dismissed.

DECISION: The applications for review filed February 17, 2021 are dismissed. Orders No. 21-UI-159753 and 21-UI-159789 remain undisturbed.

S. Alba and D. P. Hettle.

DATE of Service: March 12, 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: These decisions dismiss late applications for review of orders denying 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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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.