

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0285

Late Application for Review Dismissed Without Prejudice

PROCEDURAL HISTORY: On February 22, 2021, the Oregon Employment Department (the Department) served notice of a determination for Pandemic Unemployment Assistance (PUA) that concluded claimant was not entitled to receive PUA benefits because he had wages in another state and may qualify for regular unemployment insurance benefits in that state. Claimant filed a timely request for hearing. On March 23, 2021, ALJ S. Lee conducted a hearing, and on March 25, 2021 issued Order No. 21-UI-163506, affirming the Department's decision and concluding that claimant was not entitled to receive PUA benefits from March 1, 2020 through June 20, 2020 and July 12, 2020 through March 13, 2021. On April 14, 2021, Order No. 21-UI-163506 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On April 15, 2021, claimant filed a late application for review with EAB.

FINDINGS OF FACT: (1) On March 23, 2021, ALJ S. Lee held the evidentiary record open until noon on March 24, 2020 for claimant to submit additional documents for inclusion in the hearing record. Claimant submitted documents within that period, which were marked as Exhibit 2, received into the record, and attached to Order No. 21-UI-163506.

(2) Order No. 21-UI-163506, mailed to the parties on March 25, 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 that this decision is mailed." Order No. 21-UI-163506 at 5. Order No. 21-UI-163506 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before April 14, 2021 to be timely."

CONCLUSIONS AND REASONS: The application for review is dismissed without prejudice.

An application for review may be filed in person, or by mail, fax, or electronic means to EAB, or any office of the Department, including OAH, on forms provided by OAH or the Department. OAR 471-041-0060 (May 13, 2019). Use of the form is not required, provided the applicant requests review of a specific ALJ Order, or otherwise expresses intent to appeal an ALJ Order. OAR 471-041-0060.

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). 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).

On April 15, 2021, the appellant filed an application for review of Order No. 21-UI-163506 with EAB. ORS 657.270(6) and ORS 657.270(7)(b) required the application for review to be filed no later than April 14, 2021. The appellant’s April 15, 2021 application for review therefore is late, and is dismissed.

However, the appellant’s April 15, 2021 application for review suggests they may have filed a timely application for review before the April 14, 2021 deadline, or that they may have good cause for not filing an application for review until April 15, 2021. The April 15, 2021 application for review states, in relevant part:

I apologize for the date I was confused and couldn’t find my paperwork. Please consider this as I sent the letters to unemployment days ago.

To whom it may concern. I’m Walter [C]url and attached should be several more letters written by people I’ve done small jobs for. The independent judge only gave me 24 hrs (which I thought would be plenty) to get these letters. As it turns out, no amount of days is enough when a lot of the people are on unemployment and fear losing it if they write me a letter. After all I’m just a guy who fixed a floor or a fence for them. The letters I do have should prove that I was in the labor pool before and during the pandemic. . . . I HAVE been affected by this thing no matter what that other guy thinks. I feel I’m being singled out because there is no back log anymore. If I had omitted working in Washington or filed 6 months earlier I don’t think I would be writing this now. . . .Respectfully Walter Curl.

Absent more information, however, it cannot be determined if the appellant actually filed a timely application for review on or before April 14, 2021. For example, the appellant did not state whether they sent the “letters” to “unemployment” before or after they received Order No. 21-UI-163506 in the mail. Nor did claimant state whether the second paragraph of the above written statement is a copy of a written statement they sent with the letters. Nor did claimant state whether they sent the letters as a late response to the ALJ’s March 24, 2021 deadline for offering additional documents into the hearing record, or as an application for review of Order No. 21-UI-163506. Without such information, it cannot be determined whether the appellant expressed an intent to appeal Order No. 21-UI-163506 after receiving it and before the April 14, 2021 deadline for filing an application for review.

Assuming the appellant did not file a timely application for review by the April 14, 2021 deadline, the appellant also may have had good reason for why they did not file an application for review by the April 14, 2021 deadline. As stated above, the deadline for filing an application for review may be extended a reasonable time upon a showing of good cause. *See* ORS 657.875; OAR 471-041-0070 (May 13, 2019). If the appellant believes they had good cause for filing their application for review one day late, the

appellant may request that EAB reconsider this decision under OAR 471-041-0145 for that reason as well.

EAB will dismiss any request for reconsideration that does not include **all** of the following:

1. The appellant must file the request for reconsideration within 20 days of the date this decision was mailed; the date this decision was mailed is April 26, 2021, making the deadline May 16 2021, to file the request for reconsideration, *and*
2. The appellant must include a statement on the request for reconsideration declaring that they sent a copy of the request to the other party, *and*
3. As for whether the appellant filed a timely application for review, they must provide additional information, including the date on which they received Order No. 21-UI-163506 in the mail and the date on which they “sent the letters to unemployment,” and whether they sent the letters by mail, fax, or electronic means to EAB, OAH or another office of the Department. The appellant also must explain whether they sent the letters as a late response to the ALJ’s March 24, 2021 deadline for offering additional documents into the hearing record, or as an application for review of Order No. 21-UI-163506. The appellant also must submit a copy or otherwise show the content of any cover letter or correspondence they sent with the letters.
4. With regard to the late application for review, the appellant should include specific information about the date they received the ALJ’s order, whether they read it, whether they agreed or disagreed with the ALJ’s order, the reason(s) why they may not have filed the application for review before the deadline, whether they or their families were ill or quarantined around the deadline, whether they could not file a timely application for review for any other reason(s) not related to illness or quarantine, how that affected their ability to file a timely application for review, and any other specific details that might help EAB determine whether or not the appellant had “good cause,” which means factors or circumstances beyond their reasonable control prevented them from filing a timely application for review.

The appellant may file a request for reconsideration in many ways; please note that you need only file *one* request for reconsideration:

1. Use your smart phone, tablet, or computer to fill out the “File a Written Argument” form, available on EAB’s website: <https://www.oregon.gov/EMPLOY/EAB/Pages/default.aspx>, *or*
2. Use your smart phone, tablet, or computer to send an email to EAB at OED_EAB_OFFICE@oregon.gov, *or*
3. Send the request by U.S. mail or another delivery service, addressed to 875 Union St NE, Salem, Oregon 97311, *or*
4. Send EAB a fax at 503-378-2129.

DECISION: The application for review filed April 15, 2021 is dismissed without prejudice. Order No. 21-UI-163506 remains undisturbed.

S. Alba and D. P. Hettle.

DATE of Service: April 26, 2021

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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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
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www.Oregon.gov/Employ/eab

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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.