

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0361

Late Application for Review Allowed
Reversed ~ Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On February 4, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA benefits effective February 2, 2020. On February 24, 2021, the February 4, 2021 administrative decision became final without claimant having filed a timely request for hearing. On March 11, 2021, claimant filed a late request for hearing. ALJ Kangas reviewed claimant's request, and on April 6, 2021 issued Order No. 21-UI-164187, dismissing claimant's request for hearing as late without a showing of good cause, but subject to claimant's right to renew the request by responding to an appellant questionnaire by April 20, 2021. On April 26, 2021, Order No. 21-UI-164187 became final without claimant having filed a response to the appellant questionnaire or a application for review of Order No. 21-UI-164187 with the Employment Appeals Board (EAB). On May 3, 2021, claimant filed a late response to the appellant questionnaire and a late application for review of Order No. 21-UI-164187 with EAB. This matter comes before EAB based upon claimant's May 3, 2021 late application for review of Order No. 21-UI-164187.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence claimant's response to the appellant questionnaire, 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.

FINDINGS OF FACT: (1) Claimant's local mail delivery system to his address of record with the Department was "horrible" and "constantly late." EAB Exhibit 1.

(2) On February 4, 2021, the Department mailed a Notice of Determination for PUA to claimant at his address of record with the Department. The February 4, 2021 administrative decision stated, "You have

the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by February 24, 2021.”

(3) On March 10, 2021, claimant received the February 4, 2021 administrative decision in his mail. EAB Exhibit 1. On March 11, 2021, claimant filed a request for hearing on the February 4, 2021 administrative decision.

(4) On April 6, 2021, the Office of Administrative Hearings (OAH) mailed Order No. 21-UI-164187 to claimant at his address of record with the Department. Order No. 21-UI-164187 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-164187 at 2. Order No. 21-UI-164187 also stated on its Certificate of Mailing, “Any party may appeal the Order by filing a Request for Review with the Employment Appeals Board no later than April 26, 2021.”

(5) On Friday, April 30, 2021, claimant received Order No. 21-UI-164187 in his mail. EAB Exhibit 1. On Monday, May 3, 2021, claimant filed an application for review of Order No. 21-UI-164187.

(6) Because of the delays in claimant’s mail regarding his PUA claim, claimant began forwarding all his mail to another address in an attempt to avoid the delays in future mail deliveries. EAB Exhibit 1.

CONCLUSIONS AND REASONS: Claimant’s late application for review is allowed. Claimant’s late request for hearing also is allowed. Claimant is entitled to a hearing on the merits of the February 4, 2021 administrative decision.

Late Application for Review. The first issue before EAB is whether claimant’s late application for review of Order No. 21-UI-164187 should be allowed. 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). A letter duly directed and mailed is presumed to have been received in the regular course of the mail. ORS 40.135(1)(q).

Claimant’s application for review of Order No. 21-UI-164187 was due no later than April 26, 2021. Because claimant filed his application for review on May 3, 2021, his application for review was late. Claimant included a written statement with his application for review in which he described the circumstances that prevented him from filing the application for review on time. EAB Exhibit 1. As claimant explained in his statement, his mail delivery was “constantly late,” and for that reason, he did not receive Order No. 21-UI-164187 until April 30, 2021. The mail delay claimant experienced was a factor beyond his reasonable control that prevented claimant from filing his application for review on time. Claimant filed the application for review three days later, which was within a reasonable time after he received Order No. 21-UI-164187 in the mail. Claimant’s late application for review of Order No. 21-UI-164187 is therefore allowed.

Late Request for Hearing. The second issue before EAB is whether claimant’s late request for hearing on the February 4, 2021 administrative decision should be allowed. 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.

Claimant’s request for hearing was due by February 24, 2021. Because claimant did not file his request for hearing until March 11, 2021, his request for hearing was late. The mail delivery delay claimant experienced that delayed his receipt of the February 4, 2021 administrative decision until March 10, 2021 was a factor beyond claimant’s reasonable control. That factor ceased to exist when claimant received the decision. Claimant filed his request for hearing within seven days, which was within a reasonable time after he received the decision. Because claimant established good cause and filed within a reasonable time, his late request for hearing is allowed, and claimant is entitled to a hearing on the merits of the February 4, 2021 administrative decision.

DECISION: Order No. 21-UI-164187 is set aside, as outlined above, and a merits hearing is required on the February 4, 2021 administrative decision.

D. Hettle and A. Steger-Bentz;
S. Alba, not participating.

DATE of Service: May 27, 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.

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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.

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

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