

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0458

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On May 7, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was disqualified from receiving unemployment insurance benefits during the weeks including March 15, 2020 through March 13, 2021 (weeks 12-20 through 10-21) because she received retirement pay during the weeks claimed that was equal to or more than her weekly benefit amount (decision # 65853). On May 27, 2020, decision # 65853 became final without claimant having filed a request for hearing. On November 2, 2020, the Department served notice of an administrative decision, based in part on decision # 65853, concluding that claimant received benefits to which she was not entitled and assessing an overpayment of \$7,272 in regular and Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 162603). On November 13, 2020, claimant filed a late request for hearing on decision # 65853 and a timely request for hearing on decision # 162603.

ALJ Kangas considered claimant's late request for hearing on decision # 65853, and on December 11, 2020 issued Order No. 20-UI-157540, dismissing claimant's request for hearing on decision # 65853 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by December 25, 2020. On December 16, 2020, claimant filed a timely response to the appellant questionnaire. On February 12, 2021, ALJ Scott conducted a combined hearing to determine whether claimant had good cause to file a late request for hearing on decision # 65853; if so, the merits of that decision; and, separately, the merits of decision # 162603. On February 18, 2021, ALJ Scott issued Order No. 21-UI-161207, concluding that claimant had filed a timely request for hearing on decision # 65853 on May 19, 2020, and modifying¹ decision # 65853 to conclude that claimant was disqualified from receiving benefits for the weeks including March 22, 2020 through June 13, 2020 (weeks 13-20 through 24-20) and September 6, 2020 through September 19, 2020 (weeks 36-20 and 37-20). Also on February 18, 2021, ALJ Scott issued Order No. 21-UI-161212, modifying² decision # 162603 to

¹ Order No. 21-UI-161207 stated that decision # 65853 was affirmed. Order No. 21-UI-161207 at 4. However, as the order modified the weeks at issue in decision # 65853, the order actually modified the outcome of the administrative decision.

² Order No. 21-UI-161212 stated that decision # 162603 was affirmed. Order No. 21-UI-161212 at 4. However, as the order modified the amount of the overpayment that claimant was required to repay to the Department, the order actually modified the outcome of the administrative decision.

conclude that claimant was overpaid \$2,870 in regular benefits and \$6,600 in FPUC benefits which she was required to repay to the Department. On March 10, 2021, Orders No. 21-UI-161207 and 21-UI-161212 became final without claimant having filed applications for review with the Employment Appeals Board (EAB). On May 24, 2021, claimant filed late applications for review of Orders No. 21-UI-161207 and 21-UI-161212 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-161207 and 21-UI-161212. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0459 and 2021-EAB-0458).

FINDINGS OF FACT: (1) Order No. 21-UI-161207, mailed to claimant on February 18, 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 that this decision is mailed.” Order No. 21-UI-161207 at 5. Order No. 21-UI-161207 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before March 10, 2021 to be timely.”

(2) Order No. 21-UI-161212, mailed to claimant on February 18, 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 that this decision is mailed.” Order No. 21-UI-161212 at 4. Order No. 21-UI-161212 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before March 10, 2021 to be timely.”

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 21-UI-161207 and 21-UI-161212 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-161207 and 21-UI-161212 were due by March 10, 2021. Because claimant did not file her applications for review until May 25, 2021, the applications for review were late. Claimant provided a written statement with the applications for review. However, claimant’s written statement did not describe the 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 May 24, 2021 are dismissed. Orders No. 21-UI-161207 and 21-UI-161212 remain undisturbed.

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

DATE of Service: June 16, 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 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.

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