

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0524

Applications for Review Dismissed

PROCEDURAL HISTORY: On December 18, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective March 15, 2020 (decision # 95439). On January 7, 2021, decision # 95439 became final without claimant having filed a request for hearing. On March 15, 2021, claimant filed a late request for hearing on decision # 95439. ALJ Kangas considered claimant's request and on April 14, 2021, issued Order No. 21-UI-164817, dismissing claimant's request for hearing on decision # 95439 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 28, 2021.

On April 19, 2021, the Department served notice of an administrative decision concluding that claimant was not able or available to work and was not eligible to receive unemployment insurance benefits for the week of March 28, 2021 through April 3, 2021 (week 13-21). On April 19, 2021, the Department served notice of another administrative decision concluding that claimant did not file their claim in accordance with Department regulations and was not eligible to receive unemployment insurance benefits for week 13-21 and until claimant provided the information necessary to process their claim. Claimant filed a timely request for hearing on both of the April 19, 2021 decisions. On June 4, 2021, ALJ Monroe conducted a hearing on both of the April 19, 2021 decisions, and on June 8, 2021 issued Order No. 21-UI-168283, reversing the April 19, 2021 decision regarding claimant's ability and availability to work by concluding that claimant was able and available for work and eligible to receive benefits for week 13-21, and Order No. 21-UI-168280, reversing the April 19, 2021 decision regarding claimant's failure to provide information by concluding that claimant did not fail to provide information to the Department and was eligible to receive benefits for week 13-21.

On May 4, 2021, Order No. 21-UI-164817 dismissing claimant's request for hearing on decision # 95439 became final without claimant having responded to the appellant questionnaire or having filed a timely application for review with the Employment Appeals Board (EAB). On June 25, 2021, claimant filed timely applications for review of Orders No. 21-UI-168283 and 21-UI-168280, and a late application for review of Order No. 21-UI-164817 with EAB.

WRITTEN ARGUMENT: EAB considered claimant’s written argument in reviewing Orders No. 21-UI-168283, 21-UI-168280.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching 2021-EAB-0525 under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is contained in the written argument claimant submitted with his application for review of Order No. 21-UI-164817. This additional evidence has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to the admission of EAB Exhibit 1 into the record 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, EAB Exhibit 1 will remain in the record.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-168283, 21-UI-168280, and 21-UI-164817. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2021-EAB-0523, 2021-EAB-0524 and 2021-EAB-0525).

FINDING OF FACT: (1) Order No. 21-UI-164817, mailed to claimant on April 14, 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-164817 at 2. Order No. 21-UI-164817 also stated on its Certificate of Mailing, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than May 4, 2021.”

CONCLUSIONS AND REASONS: Claimant’s applications for review of Orders No. 21-UI-168283 and 21-UI-168280 present no justiciable controversy and are dismissed. Claimant’s late application for review of Order No. 21-UI-164817 is dismissed.

Orders No. 21-UI-168283 and 21-UI-168280. On June 25, 2021, EAB received from claimant applications for review of Orders No. 21-UI-168283 and 21-UI-168280, orders that allowed the appellant benefits. Claimant did not assign error to any portion of the orders, did not request reversal of any portion of the orders, and alleged no facts entitling claimant to further relief in these matters. Accordingly, there is no justiciable controversy before EAB based upon claimant’s applications for review of Orders No. 21-UI-168283 and 21-UI-168280. *See accord Barcik v. Kubiacyk*, 321 Or 174, 895 P2d 765 (1995). Because these cases before EAB present no justiciable controversy, the applications for review of Orders No. 21-UI-168283 and 21-UI-168280 are dismissed and Orders No. 21-UI-168283 and 21-UI-168280 remain undisturbed.

Order No. 21-UI-164817. 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. 21-UI-164817 was due May 4, 2021. Because claimant did not file his application for review until June 25, 2021, the application for review was late. Claimant provided a written statement with the application for review. However, claimant's written statement did not describe the circumstances that prevented claimant from filing the application for review on time. EAB Exhibit 1. Accordingly, claimant did not show good cause for the late application for review, and claimant's late application for review is dismissed.

DECISION: The applications for review of Orders No. 21-UI-168283, 21-UI-168280, and 21-UI-164817 filed June 25, 2021 are dismissed. Orders No. 21-UI-168283, 21-UI-168280, and 21-UI-164817 remain undisturbed.

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

DATE of Service: July 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.

NOTE: This decision dismisses an application for review of a decision that 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.

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 desisyong ito.

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.