

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0605

Late Application for Review Allowed
Reversed & Remanded

PROCEDURAL HISTORY: On November 30, 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 March 15, 2020 (decision # 62827). On December 21, 2020, decision # 62827 became final without claimant having filed a request for hearing. On February 25, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on March 24, 2021 issued Order No. 21-UI-163311, dismissing the request as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 7, 2021. On April 13, 2021, Order No. 21-UI-163311 became final without claimant having filed a response to the appellant questionnaire, or an application for review with the Employment Appeals Board (EAB). On April 23, 2021, claimant filed a late response to the appellant questionnaire with the Office of Administrative Hearings (OAH). On May 17, 2021, ALJ Kangas mailed a letter to claimant stating that because claimant's response to the appellant questionnaire was late, OAH would not consider it or issue another order, and that Order No. 21-UI-163311 remained in effect. On May 21, 2021, claimant filed a late application for review of Order No. 21-UI-163311 with EAB.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's response to the appellant questionnaire, which has been marked as EAB Exhibit 1, and claimant's email submitted with their application for review, which has been marked as EAB Exhibit 2. Copies are provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 or EAB Exhibit 2 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 exhibits will remain in the record.

The parties may offer new information such as documents not considered in this decision into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to

provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) Order No. 21-UI-163311, mailed to claimant on March 24, 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-163311 at 2. Order No. 21-UI-163311 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 April 13, 2021.”

(2) On April 4, 2021, claimant sent a response to the appellant questionnaire to OAH by regular U.S. mail. EAB Exhibit 2. On April 20, 2021, claimant “followed up” with OAH regarding the status of their late request for hearing. EAB Exhibit 2. OAH advised claimant to fax their response to the appellant questionnaire to OAH. EAB Exhibit 2. On April 23, 2021, claimant faxed their response to OAH. EAB Exhibit 2.

CONCLUSIONS AND REASONS: Claimant’s late application for review is allowed. Order No. 21-UI-163311 is set aside and this matter remanded for further development of the record to determine whether claimant’s late request for hearing on decision # 62827 should be allowed and, if so, the merits of that decision.

Late Application for Review. 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 was received in the regular course of the mail. ORS 40.135(1)(q).

The application for review of Order No. 21-UI-163311 was due by April 13, 2021. Because claimant did not file their application for review until May 21, 2021, the application for review was late. However, the record shows good cause for claimant’s late application for review. Claimant provided a written statement with their application for review explaining that on April 4, 2021, they sent a timely response to the appellant questionnaire to OAH. EAB Exhibit 2. The record shows that OAH did not receive claimant’s response mailed on April 4, 2021. Although a mailed letter is generally presumed to be received in the regular course of the mail, claimant asserted in their response to the appellant questionnaire that they did not receive decision # 62827 or “any documentation” regarding their unemployment insurance benefits, which indicates that claimant was experiencing difficulties with their mail. EAB Exhibit 1. Claimant had no reason to know that OAH did not receive their response to the appellant questionnaire until OAH advised claimant on April 20, 2021 to resend the response by fax to OAH. Although claimant faxed the response on April 23, 2021, it was not until May 17, 2021 that claimant received notice from OAH that it would not consider their response to the appellant questionnaire. Four days later, on May 21, 2021, claimant submitted an application for review to EAB.

Had OAH received claimant's April 4, 2021 response, it is reasonable to conclude that OAH would have issued notice of a hearing to determine if claimant's late request for hearing would be allowed, or, at minimum, would have given claimant notice that OAH was leaving Order No. 21-UI-163311 undisturbed. It is also reasonable to presume that had OAH responded to claimant regarding their April 4, 2021 response to the appellant questionnaire, claimant would have had time to file a timely application for review with EAB by April 13, 2021. That OAH did not receive claimant's April 4, 2021 appellant questionnaire response, which prevented claimant from knowing the status of their late request for hearing until May 17, 2021, was a circumstance beyond claimant's reasonable control. Because they filed their application on May 21, 2021, which was within seven days of May 17, 2021, claimant filed their application for review within a reasonable time after that circumstance ended. For these reasons, claimant had good cause to file the late application for review, and claimant's late application for review is therefore allowed.

Late Request for Hearing. 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.

The deadline to file a timely request for hearing on decision # 62827 was December 21, 2020. Claimant filed their request for hearing on February 25, 2021. Therefore, the request for hearing was late. However, claimant may have had good cause to file their request for hearing late because the record shows that claimant did not receive decision # 62827 in the mail. EAB Exhibit 1. In their response to the appellant questionnaire, claimant stated that they left Oregon, moved to California for six months, and returned to Oregon, and did not receive "any documentation" regarding their claim. EAB Exhibit 1 at 2.

The fact that claimant did not receive the decision in the mail may have constituted a factor beyond claimant's reasonable control that prevented claimant from filing a request for hearing by the December 21, 2020 deadline. However, the record does not provide detail as to any problems claimant may have experienced with receiving their mail, and is insufficient to determine when claimant learned of the existence of decision # 62827, and whether claimant filed their request for hearing within a reasonable time thereafter. Further, the record does not show what attempts, if any, claimant made to notify the Department of changes in their address, to have their mail forwarded to them at their new addresses, or to otherwise ensure that they received their mail in a timely manner.

Because further development of the record is necessary for a determination of whether claimant had good cause to file a late request for hearing, Order No. 21-UI-163311 is reversed, and this matter is remanded for a hearing on whether the late request for hearing on decision # 62827 should be allowed and, if so, the merits of that decision.

DECISION: Order No. 21-UI-163311 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: August 3, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-163311 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 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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