

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0625

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On December 2, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the weeks of May 17, 2020 through September 12, 2020 and was therefore not eligible to receive unemployment insurance benefits for those weeks (decision # 61734). On December 22, 2020, decision # 61734 became final without claimant having filed a request for hearing. On February 10, 2021, the Department served notice of an administrative decision, based in part on decision # 61734, concluding that claimant received benefits to which they were not entitled and assessing an overpayment of \$3,618 in regular unemployment insurance benefits and \$6,000 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 100003). On March 2, 2021, claimant filed a late request for hearing on decision # 61734 and a timely request for hearing on decision # 100003.

On May 14, 2021, ALJ S. Lee conducted a consolidated hearing, and on May 24, 2021 issued Order No. 21-UI-167365, concluding that claimant's request for hearing on decision # 61734 was timely filed and affirming decision # 61734, and Order No. 21-UI-167361 affirming decision # 100003. On June 14, 2021, Orders No. 21-UI-167365 and 21-UI-167361 became final without claimant having filed applications for review with the Employment Appeals Board (EAB). On August 2, 2021, claimant filed late applications for review with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-167365 and 21-UI-167361. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0625 and 2021-EAB-0626).

FINDINGS OF FACT: (1) Order No. 21-UI-167365, mailed to claimant on May 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-167365 at 6. Order No. 21-UI-167365 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before June 14, 2021 to be timely."

(2) Order No. 21-UI-167361, mailed to claimant on May 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-167361 at 6. Order No. 21-UI-167361 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before June 14, 2021 to be timely.”

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 21-UI-167365 and 21-UI-167361 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-167365 and 21-UI-167361 were due by June 14, 2021. Because claimant did not file his applications for review until August 2, 2021, the applications for review were late. Claimant provided a written statement with the applications for review. The written statement consists of a cover letter from an attorney who filed claimant’s late applications for review on his behalf but purports not to represent claimant, a declaration of the attorney, a declaration of the attorney’s assistant, email correspondence, and a declaration of claimant. The written statement describes the circumstances that prevented claimant from filing the applications for review on time.

Claimant’s written statement states that claimant received Orders No. 21-UI-167365 and 21-UI-167361 shortly after they were mailed. On June 9, 2021, claimant met with an attorney to discuss appealing the orders. The attorney advised they would research the issue and offered to fax the applications for review to EAB on claimant’s behalf, but did not confirm with claimant whether he wanted the attorney to do so. Later that day, claimant emailed and hand-delivered documents, including the applications for review, to the attorney’s assistant. Claimant’s email included instructions to file the applications for review and claimant assumed the assistant would do so. However, the assistant declined to fax the applications for review because they interpreted claimant’s email to mean that claimant would fax the applications for review himself. On July 12, 2021, claimant sent an email to the assistant inquiring about the status of the appeal. On July 19, 2021, the assistant replied to claimant’s email and informed claimant that the attorney’s office had not faxed claimant’s applications for review to EAB. On July 28, 2021, claimant sent the assistant an email advising that he had been “off grid” in eastern Oregon the previous ten days and was “catching up.” The assistant and claimant then spoke by telephone and agreed that the attorney’s office would fax the applications for review for claimant with attached declarations describing what had occurred. On August 2, 2021, claimant filed late applications for review of Orders No. 21-UI-167365 and 21-UI-167361.

Based on the information in claimant’s written statement, claimant established good cause to extend the June 14, 2021 filing deadline a reasonable time. Given that the attorney offered to fax the applications

for review on claimant's behalf during their June 9, 2021 meeting and that claimant emailed and hand-delivered the applications to the assistant that day with instructions to file, claimant reasonably believed that the attorney's office would file the applications for review. This constituted a circumstance beyond claimant's reasonable control that prevented him from filing the applications for review by the June 14, 2021 deadline. Accordingly, claimant showed good cause to extend the 20-day filing period for the applications for review.

However, the filing period extension lasted only a "reasonable time," which OAR 471-041-0070(2)(b) defines as seven days after the circumstances that prevented the timely filing ceased to exist. The information in claimant's written statement shows that claimant filed his applications for review more than seven days after those circumstances ceased to exist.

More likely than not, the circumstances that prevented claimant from timely filing the applications for review ceased to exist on July 19, 2021 when claimant received email confirmation from the assistant that the attorney's office had not filed the applications for review. In claimant's written statement, claimant acknowledged receiving the assistant's email on July 19, 2021. The information provided supports that claimant learned the contents of the email on the day he received it as claimant did not assert or show that he failed to read the contents of the email that day. Although claimant sent the assistant an email on July 28, 2021 indicating he had been "off grid" the previous ten days and was "catching up," claimant did not state in the email that he had lacked email access or otherwise failed to learn of the contents of the assistant's July 19, 2021 email on the day it was sent. In light of his "off grid" status, claimant may have been unable to file his applications for review himself when he learned on July 19, 2021 that the attorney's office had not filed them. Nevertheless, there is no indication from the information provided that claimant could not have called or otherwise contacted the attorney's office on July 19, 2021 or thereafter and instructed the attorney or the assistant to file his applications for review on his behalf.

Thus, the circumstances that prevented claimant from filing ceased to exist on July 19, 2021. Claimant did not file his applications for review until August 2, 2021. August 2, 2021 is more than seven days after July 19, 2021. Accordingly, claimant did not file his late applications for review within a "reasonable time," and for that reason, claimant's late applications for review are dismissed.

DECISION: The applications for review filed August 2, 2021 are dismissed. Orders No. 21-UI-167365 and 21-UI-167361 remain undisturbed.

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

DATE of Service: August 20, 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 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 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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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.