

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0749

Late Application for Review Dismissed

PROCEDURAL HISTORY: On December 15, 2020, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to receive PUA benefits effective February 2, 2020. On January 4, 2021, the December 15, 2020 administrative decision became final without claimant having filed a request for hearing. On May 25, 2021, claimant filed a late request for hearing on the December 15, 2020 administrative decision. ALJ Kangas considered claimant's request, and on August 27, 2021 issued Order No. 21-UI-173521, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 10, 2021. On September 16, 2021, Order No. 21-UI-173521 became final without claimant having responded to the appellant questionnaire or having filed an application for review of Order No. 21-UI-173521 with the Employment Appeals Board (EAB). On September 17, 2021, claimant filed a late application for review of Order No. 21-UI-173521. This matter comes before EAB based upon claimant's September 17, 2021 late application for review of Order No. 21-UI-173521.

FINDING OF FACT: (1) Order No. 21-UI-173521, mailed to claimant on August 27, 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-173521 at 2. Order No. 21-UI-173521 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 September 16, 2021."

(2) On September 17, 2021, claimant filed their application for review by fax. The faxed document showed an encoded date of September 17, 2021 at 12:02 a.m. Pacific Daylight Time.

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 21-UI-173521 is 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). If an application for review is filed by fax, the filing date is the encoded date on the faxed document. OAR 471-041-0065(1)(d).

The application for review of Order No. 21-UI-173521 was due by September 16, 2021. Because claimant did not file their application for review until September 17, 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 them from filing the application for review on time. Accordingly, claimant did not show good cause for the late application for review, and claimant's late application for review is dismissed.

Claimant's application for review shows that claimant narrowly missed filing in a timely manner because the date and time of their filing, based on the encoded date on the faxed document, was September 17, 2021 at 12:02 a.m. Pacific Daylight Time. While the encoded date therefore reflects that claimant's application for review was late, claimant's submission shows that even if claimant had filed her application for review in a timely manner, claimant would have failed to establish good cause to extend the period of time to request a hearing on the December 15, 2020 administrative decision.

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.

On December 15, 2020, the Department mailed the administrative decision to claimant's address on file with the Department. The December 15, 2020 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 January 4, 2021." December 15, 2020 administrative decision at 2. Claimant did not file a request for hearing on the December 15, 2020 administrative decision until May 25, 2021.

On the cover page of the fax transmission containing claimant's application for review, claimant stated "I didn't know my claim had been denied as I wasn't notified that it was denied." However, the December 15, 2020 administrative decision was mailed to the claimant's address on file with the Department, which is the same address claimant identifies as their address on their late application for review. Without some elaboration, it is not evident that claimant's statement on their fax cover page rebuts the presumption that the December 15, 2020 administrative decision was received in the regular course of the mail. OAR 137-003-0520(10) (January 31, 2012) ("Documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary."); *see also* ORS 40.135(1)(q). Claimant also stated, "I don't remember filing an appeal and didn't know I needed to as all of the unemployment representatives I spoke with kept telling me I needed more information for my claim to be approved." However, the December 15, 2020 administrative decision, which is presumed to have been received shortly after it was mailed, notified

claimant that their deadline to file a timely appeal was January 4, 2021. Viewed objectively, it was within claimant's reasonable control to carefully read the December 15, 2020 administrative decision in its entirety and request a hearing by the January 4, 2021 deadline. To any extent claimant's failure to carefully read the administrative decision was a mistake, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

In summary, because the encoded date of claimant's faxed document shows that claimant filed their request for hearing on September 17, 2021, the application for review was late and is dismissed because claimant did not show good cause for the late application for review. Further, even if the application for review had been timely filed, which it was not, claimant failed to establish good cause to extend the period of time to request a hearing on the December 15, 2020 administrative decision

DECISION: The application for review filed September 17, 2021 is dismissed. Order No. 21-UI-173521 remains undisturbed.

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

DATE of Service: October 8, 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 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 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 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.

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