

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0957

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On April 1, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective December 20, 2020 (decision # 143539). Also on April 1, 2021, the Department served notice of an administrative decision concluding that claimant was not able to work for the period including February 28, 2021 through March 6, 2021 (week 09-21), and was therefore ineligible to receive benefits for that week and until the reason for the denial had ended (decision # 144903). Claimant filed timely requests for hearing on decisions # 143539 and 144903. On October 14, 2021, ALJ Ramey conducted hearings on decisions # 143539 and 144903. On October 22, 2021, ALJ Ramey issued Order No. 21-UI-177832, reversing decision # 143539 by concluding that claimant quit work with good cause and was not disqualified from receiving benefits based on the work separation. Also on October 22, 2021, ALJ Ramey issued Order No. 21-UI-177826, modifying¹ decision # 144903 by concluding that claimant was not able to work, and therefore ineligible to receive benefits, for the period including February 28, 2021 through May 29, 2021 (weeks 09-21 through 21-21). On November 12, 2021, Orders No. 21-UI-177832 and 21-UI-177826 became final without claimant having filed applications for review with the Employment Appeals Board (EAB). On November 13, 2021, claimant filed late applications for review of Orders No. 21-UI-177832 and 21-UI-177826 with EAB.²

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-177832 and 21-UI-177826. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0957 and 2021-EAB-0958).

FINDINGS OF FACT: (1) Order No. 21-UI-177832, mailed to claimant on October 22, 2021, stated, “You may appeal this decision by filing the attached form Application for Review with the Employment

¹ Order No. 21-UI-177826 stated that it affirmed decision # 144903. Order No. 21-UI-177826 at 3. However, Order No. 21-UI-177826 modified decision # 144903 by concluding that claimant was ineligible for benefits for additional weeks.

² A copy of the envelope in which claimant filed their applications for review is included with these decisions.

Appeals Board within 20 days of the date that this decision is mailed.” Order No. 21-UI-177832 at 3. Order No. 21-UI-177832 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before November 12, 2021 to be timely.”

(2) Order No. 21-UI-177826, mailed to claimant on October 22, 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-177826 at 3. Order No. 21-UI-177826 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before November 12, 2021 to be timely.”

CONCLUSIONS AND REASONS: Claimant’s application for review of Order No. 21-UI-177832 is dismissed because it was late and presents no justiciable controversy. Claimant’s application for review of Order No. 21-UI-177826 is dismissed because it was late.

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 filing date for an application for review filed by mail is the postmark date affixed to the envelope in which the application was mailed. OAR 471-041-0065(1)(b) (May 13, 2019). The postmark date on the envelope in which claimant mailed their applications for review was November 13, 2021; that date is therefore the filing date.

The applications for review of Orders No. 21-UI-177832 and 21-UI-177826 must be dismissed because they were late. The applications for review of Orders No. 21-UI-177832 and 21-UI-177826 were due November 12, 2021. Because claimant did not file their applications for review until November 13, 2021, the applications for review were late. Claimant’s applications for review did not include a written statement describing the circumstances that prevented claimant from filing the applications for review by the November 12, 2021 deadline. Accordingly, claimant did not show good cause for the late applications for review, and claimant’s late applications for review are dismissed.

The application for review of Order No. 21-UI-177832 is also dismissed because it presents no justiciable controversy. Order No. 21-UI-177832 allows the appellant benefits based on the work separation. Claimant did not include a written statement or argument that assigned error to any portion of that order, that requested reversal of any portion of the order, or that alleged facts entitling claimant to further relief in that matter. Accordingly, there is no justiciable controversy before EAB based upon claimant’s application for review of Order No. 21-UI-177832. *See accord Barcik v. Kubiacyk*, 321 Or 174, 895 P2d 765 (1995). Because the case before EAB regarding Order No. 21-UI-177832 presents no justiciable controversy, the application for review of Order No. 21-UI-177832 is dismissed for that reason as well as for being late, and Order No. 21-UI-177832 remains undisturbed.

DECISION: The applications for review filed November 13, 2021 are dismissed. Orders No. 21-UI-177832 and 21-UI-177826 remain undisturbed.

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

DATE of Service: December 21, 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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