

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1001

Late Application for Review Allowed
Order 21-UI-177803 Reversed and Remanded

PROCEDURAL HISTORY: On August 10, 2021, the Oregon Employment Department (the Department) served notice of two administrative decisions. One concluded that claimant was denied benefits for the weeks from April 18 through June 12, 2021 because their weekly claims for benefits for those weeks were late (decision # 134121). The other concluded that claimant was denied benefits for the weeks from June 13 through July 17, 2021 because their weekly claims for benefits for those weeks were late (decision # 134404). On August 30, 2021, decisions # 134121 and 134404 became final without claimant having filed a request for hearing on either decision.

On September 2, 2012, claimant filed a late request for hearing, which the Office of Administrative Hearings (OAH) treated as late requests for hearings on decision # 134121 and decision # 134404. ALJ Kangas considered the request(s), and on October 22, 2021 issued Order No. 21-UI-177802, dismissing the late request for hearing on decision # 134121, subject to claimant's right to renew the request by responding to an attached appellant questionnaire by November 5, 2021. Also on October 22, 2021, ALJ Kangas issued Order No. 21-UI-177803, dismissing the late request for hearing on decision # 134404, subject to claimant's right to renew the request by responding to an attached appellant questionnaire by November 5, 2021. On October 29, 2021, claimant filed a timely response to the appellant questionnaire attached to Order No. 21-UI-177802 along with a copy of that order and the Application for Review form attached to the order.¹

On November 12, 2021, Order No. 21-UI-177803 became final without claimant having filed a response to the appellant questionnaire attached to that order, or an application for review of the order with the Employment Appeals Board (EAB). On November 24, 2021 claimant filed a late application for review of Order 21-UI-177803 with EAB.

¹ EAB has taken notice of information regarding claimant's request for hearing on decision # 134121, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

FINDINGS OF FACT: (1) Order No. 21-UI-177803, 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-177803 at 2. Order No. 21-UI-177803 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) Claimant never received Order No. 21-UI-177803, or therefore the appellant questionnaire attached to that order, in the mail. Claimant was unaware of Order No. 21-UI-177803 until they contacted the Department on November 24, 2021.² That same day, claimant submitted an application for review of Order No. 21-UI-177803 online without a response to the appellant questionnaire attached to that order, a copy of the order, or the Application for Review form attached to the order.

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 21-UI-177803 is allowed. Order No. 21-UI-177803 is reversed, and this matter remanded to OAH for further proceedings to determine whether claimant’s late request for hearing on decision # 134404 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).

The application for review of Order No. 21-UI-177803 was due by November 12, 2021. Because claimant did not file their application for review until November 24, 2021, the application for review was late. With their application for review, claimant included a written statement that, “I Never received packages for appeal date deadline or a dismissal,” which is reasonably interpreted as an assertion that they never received Order No. 21-UI-177803 in the mail. A letter duly directed and mailed is presumed to have been received in the regular course of the mail. ORS 40.135(1)(q). However, the evidence in the record is sufficient to overcome that presumption. The Department’s own records indicate that claimant was unaware of Order No. 21-UI-177803 until November 24, 2021, and claimant filed their application for review without a response to the appellant questionnaire attached to Order No. 21-UI-177803, a copy of that order, or the Application for Review Form attached to the order. If claimant had received Order No. 21-UI-177803 in the mail, they likely would have submitted those documents, given that they submitted such documents when they file their timely response to the appellant questionnaire attached to Order No. 21-UI-177802.

² EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

Claimant's failure to receive Order No. 21-UI-177803 was likely due to factors or circumstances beyond their reasonable control, given that they apparently received Order No. 21-UI-177802 in regular course of the mail. The record therefore shows that factors or circumstances beyond claimant's reasonable control prevented them from filing a timely application for review of Order No. 21-UI-177803. The record further shows that claimant filed their application for review the day they became aware of Order No. 21-UI-177803, and therefore within a reasonable time. Claimant's late application for review of Order No. 21-UI-177803 therefore is 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 request for hearing on decision # 134404 was due by August 30, 2021. Because claimant did not file their request for hearing until September 2, 2021, the request for hearing was late. Order No. 21-UI-177803's dismissal of claimant's late request for hearing on decision # 134404 was subject to claimant's right to renew the request by responding to an attached appellant questionnaire by November 5, 2021. However, the record shows that claimant did not receive Order No. 21-UI-177803, or therefore the attached appellant questionnaire, in the mail. Claimant therefore has not had a reasonable opportunity for a fair hearing on whether their request for hearing on decision # 134404 should be allowed, including a full and fair inquiry into the facts necessary for consideration of that issue, as required under ORS 657.270. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant's late request for hearing on decision # 134404 should be allowed, Order No. Order No. 21-UI-177803 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-177803 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: December 3, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. Order No. 21-UI-177803 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 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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