

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1028

Late Application for Review of Order No. 21-UI-172250 Allowed
Order No. 21-UI-172250 Affirmed ~ Late Request for Hearing Dismissed
Order No. 21-UI-180299 Affirmed ~ Request to Reopen Denied

PROCEDURAL HISTORY AND FINDINGS OF FACT: On January 27, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work or available for work for the weeks including October 25, 2020 through January 23, 2021 (weeks 44-20 through 03-21) and was therefore not eligible to receive unemployment insurance benefits for those weeks (decision # 90837). On February 16, 2021, decision # 90837 became final without claimant having filed a request for hearing. On March 7, 2021, claimant filed a late request for hearing on decision # 90837. ALJ Kangas reviewed claimant's request, and on April 6, 2021, issued Order No. 21-UI-164221, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 20, 2021. On April 14, 2021, claimant filed a timely response to the appellant questionnaire. On June 18, 2021, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 21-UI-164221 was vacated and that a hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # 90837. On August 2, 2021, ALJ Micheletti conducted a hearing at which claimant and the Department appeared, and at which the employer failed to appear. On August 10, 2021, ALJ Micheletti issued Order No. 21-UI-172250, re-dismissing claimant's request for hearing as late without a showing of good cause, and leaving decision # 90837 undisturbed.

On August 14, 2021, claimant filed an application for review with the Employment Appeals Board (EAB) that OAH treated as a request to reopen the August 2, 2021 hearing. ALJ Kangas reviewed claimant's request, and on November 22, 2021, issued Order No. 21-UI-180299, denying the request and leaving Order No. 21-UI-172250 undisturbed.¹ On December 1, 2021, claimant filed an application for review with EAB that EAB construed as a late application for review of Order No. 21-UI-172250 and a timely application for review of Order No. 21-UI-180299.

¹ Order No. 21-UI-180299 mistakenly found that claimant did not appear for the August 2, 2021 hearing. Claimant did appear for the August 2, 2021 hearing.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-172250 and 21-UI-180299. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0045 and 2021-EAB-1028).

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 21-UI-172250 is allowed. Claimant's request to reopen the August 2, 2021 is denied.

Late Application for Review of Order No. 21-UI-172250. An application for review is timely if it is filed within 20 days of the date that 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-172250 was due by August 30, 2021. Because claimant did not file their application for review until December 1, 2021, the application for review was late. However, the record shows that claimant had good cause to extend the filing period a reasonable time because OAH treated claimant's August 14, 2021 filing as a request to reopen rather than a timely application for review of Order No. 21-UI-172250. That OAH treated what claimant more likely than not intended to be an application for review of Order No. 21-UI-172250 as a request to reopen was a factor beyond claimant's reasonable control that prevented a timely application for review of that order. ALJ Kangas issued Order No. 21-UI-180299, denying the reopen request on November 22, 2021. The record shows that claimant's application for review filed on December 1, 2021 was more likely than not filed within the seven-day reasonable time after claimant learned that her application had been treated as a request to reopen rather than an application for review of Order No. 21-UI-172250. For these reasons, claimant's late application for review of Order No. 21-UI-172250 is allowed.

Order No. 21-UI-172250. On *de novo* review of the entire consolidated hearing record and pursuant to ORS 657.275(2), Order No. 21-UI-172250, which dismissed claimant's late request for hearing on decision # 90837, is **adopted**.

Order No. 21-UI-180299 Request to Reopen. ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. "Good cause" exists when the requesting party's failure to appear at the hearing arose from an excusable mistake or from factors beyond the party's reasonable control. OAR 471-040-0040(2) (February 10, 2012). The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which OAH shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

OAR 471-040-0040(1)(a) provides in relevant part that "[a]fter service of an administrative law judge's written decision, . . . an administrative law judge may reopen the hearing if the party . . . [r]equesting the reopening failed to appear at the hearing[.]"

Order No. 21-UI-180299 concluded that it denied claimant's request to reopen because claimant did not provide information about why she "failed to appear at the previously scheduled hearing" and that, in failing to do so, claimant did not show she had good cause existed for "for not appearing at hearing." Order No. 21-UI-180299 at 2, 3. Although the order correctly concluded that claimant's request to reopen should be denied, the record does not support the order's reason for the denial.

Claimant's request to reopen the August 2, 2021 hearing must be denied because claimant appeared for the hearing. ORS 657.270(5) and OAR 471-040-0040(1)(a) provide that any party who failed to appear at a hearing may request to reopen the hearing. Because claimant appeared for the August 2, 2021 hearing, the applicable law did not permit the administrative law judge to reopen the hearing, and as such, the request to reopen the hearing must be denied.

DECISION: Orders No. 21-UI-172250 and 21-UI-180299 are affirmed.

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

DATE of Service: January 7, 2022

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 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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