

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1056

Late Application for Review Allowed
Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On March 22, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective June 30, 2019 (decision # 124233). Claimant filed a timely request for hearing. On April 7, 2021, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for April 21, 2021 at 10:45 a.m. On April 21, 2021, claimant failed to appear at the hearing, and ALJ Snyder issued Order No. 21-UI-165253, dismissing claimant's request for hearing due to his failure to appear. On May 7, 2021, claimant filed a timely request to reopen the April 21, 2021 hearing. On July 16, 2021, OAH served notice of a hearing scheduled for August 6, 2021 at 10:45 a.m. to determine whether claimant had good cause to reopen the April 21, 2021 hearing and, if so, the merits of decision # 124233. On August 6, 2021, claimant failed to appear at the hearing, and ALJ Janzen issued Order No. 21-UI-172071, dismissing claimant's request to reopen the April 21, 2021 hearing and leaving Order No. 21-UI-165253 undisturbed. On August 9, 2021, claimant filed a timely request to reopen the August 6, 2021 hearing. On November 18, 2021, OAH served notice of a hearing scheduled for December 2, 2021 at 1:30 p.m. to determine whether claimant had good cause to reopen the August 6, 2021 hearing and, if so, whether claimant had good cause to reopen the April 21, 2021 hearing, and if so, the merits of decision # 124233. On December 2, 2021, ALJ Lucas conducted a hearing at which the employer failed to appear, and on December 8, 2021 issued Order No. 21-UI-181429, allowing claimant's request to reopen the August 6, 2021 hearing, but denying claimant's request to reopen the April 21, 2021 hearing and therefore leaving Order No. 21-UI-165253 undisturbed. On December 28, 2021, Order No. 21-UI-181429 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On December 31, 2021, claimant filed a late application for review of Order No. 21-UI-181429 with EAB.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's statement in support of their late application for review, and has been marked as EAB Exhibit 1, and a copy

provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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 exhibit will remain in the record.

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090, EAB considered only information received into evidence at the hearing when reaching this decision.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's request to reopen the August 6, 2021 hearing is **adopted**. The remainder of this decision addresses whether to allow claimant's late application for review of Order No. 21-UI-181429 and request to reopen the April 21, 2021 hearing.

FINDINGS OF FACT: (1) The April 7, 2021 notice of hearing for the April 21, 2021 hearing stated that the notice was regarding the matter of Labworks INC, and that a hearing was scheduled for April 21, 2021, to begin at 10:45 a.m. Exhibit 3. Claimant received and read the notice by April 14, 2021.

(2) In early April 2021, claimant received a notice for another hearing on April 21, 2021 regarding a work separation from a different employer, Laborworks. That hearing was scheduled to begin earlier on April 21, 2021, before the Labworks INC hearing. Claimant mistakenly assumed that both the Laborworks and Labworks INC work separations would be addressed in the first, earlier hearing. Claimant disregarded the notice of hearing for the Labworks INC matter that was scheduled to begin at 10:45 a.m.

(3) Claimant understood that the work separation from Labworks INC was not addressed during the first April 21, 2021 hearing regarding Laborworks.

(4) Order No. 21-UI-181429, mailed to claimant on December 8, 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-181429 at 4. Order No. 21-UI-181429 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before December 28, 2021 to be timely."

(5) From mid-December 2021 until December 29, 2021, claimant was in a hospital in Washington and unable to check his mail in Oregon. On December 29, 2021, claimant was able to check his mail.

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 21-UI-181429 is allowed. Claimant's request to reopen the April 21, 2021 hearing is denied.

Late Application for Review. 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-181429 was due December 28, 2021. Because claimant did not file their application for review until December 31, 2021, the application for review was late. Claimant provided a written statement with his application for review. EAB Exhibit 1. In his written statement, claimant explained that he was unable to file an application for review in a timely manner because he was hospitalized and unable to check his mail for two weeks at the end of December 2021. Claimant further explained that those circumstances ended on December 29, 2021. From claimant’s written statement, it is reasonable to presume that claimant’s hospitalization prevented him from reading Order No. 21-UI-181429 until December 29, 2021. Claimant’s hospitalization and inability to check his mail were circumstances beyond claimant’s reasonable control. Because claimant filed his application for review on December 31, 2021, which was within seven days of the December 29, 2021 date that claimant was able to check his mail and read Order No. 21-UI-181429, claimant filed his application for review within a “reasonable time” after the circumstances that prevented a timely filing ceased to exist. Claimant therefore established good cause to extend the filing deadline to December 31, 2021, and the late application for review is allowed.

Request to Reopen the April 21, 2021 Hearing. 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).

Claimant did not establish good cause for failing to appear at the April 21, 2021 hearing. Claimant received the notice of hearing before the hearing. The notice stated that it was “In the Matter of” claimant and Labworks INC, and that a hearing was scheduled for April 21, 2021 at 10:45 a.m. Claimant read the notice. The notice contained an underlined instruction that claimant “must call” at the time of the hearing. Exhibit 3. The notice stated that the hearing would be dismissed if claimant did not call at the time of the hearing. Exhibit 3. That claimant “did not realize OAH would schedule two different hearings on the same day” does not show that it was beyond claimant’s reasonable control to read and follow the instructions on the notice of hearing. Audio Record at 30:58. Claimant’s assumption that two work separations from different employers would be addressed in only one of the noticed hearings was a mistake. However, it was not an excusable mistake because it did not, for example, raise a due process issue, and was not the result of inadequate notice, or the inability to follow directions despite substantial efforts to comply. Claimant’s request to reopen the April 21, 2021 hearing therefore is denied. Order No. 21-UI-165253, dismissing claimant’s request for hearing on decision # 124233, remains undisturbed.

DECISION: Order No. 21-UI-181429 is affirmed.

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

DATE of Service: February 9, 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

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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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