

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0117

Late Application for Review Allowed
Order No. 21-UI-179008 Affirmed ~ Ineligible Weeks 32-21 through 35-21

PROCEDURAL HISTORY: On September 15, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from August 8, 2021 through September 4, 2021 (weeks 32-21 through 35-21) and was therefore denied unemployment insurance benefits for those weeks (decision # 113040). Claimant filed a timely request for hearing. On October 29, 2021, ALJ Ramey conducted a hearing, and on November 4, 2021 issued Order No. 21-UI-179008, affirming decision # 113040. On November 24, 2021, Order No. 21-UI-179008 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On January 11, 2022, claimant filed a late application for review of Order No. 21-UI-179008 with EAB.

EVIDENTIARY MATTERS: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the email and statement claimant submitted to the Department on January 11, 2022, which has been marked as EAB Exhibit 1, and a January 28, 2022 web form document labeled "Hearing Request," which has been marked as EAB Exhibit 2. Copies of EAB Exhibits 1 and 2 are provided to the parties with this decision. Any party that objects to the admission of EAB Exhibits 1 or 2 into the record 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 exhibits will remain in the record.

WRITTEN ARGUMENT: Claimant's February 11, 2022 written 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 her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB did not consider the new information contained in claimant's February 11, 2022 written argument when reaching this decision.

FINDINGS OF FACT: (1) On November 4, 2021, the Office of Administrative Hearings (OAH) mailed copies of Order No. 21-UI-179008 to the parties. Order No. 21-UI-179008 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-179008 at 5. Order No. 21-UI-179008 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before November 24, 2021 to be timely.”

(2) Claimant did not receive the copy of Order No. 21-UI-179008 mailed to her on November 4, 2021. EAB Exhibit 1. Claimant had checked her mail daily and had not changed her address during 2021 or 2022. EAB Exhibit 2.

(3) On approximately January 10, 2022, claimant spoke with a Department representative, who told claimant that claimant “was denied” for August 8, 2021 through September 4, 2021. The Department representative “encouraged” claimant to appeal, but told claimant that she needed “the letter.” Claimant told the representative that she had not received the decision, and the representative stated that she would send the decision to claimant. EAB Exhibit 2.

(4) On January 11, 2022, claimant contacted the Department by email and stated that she “had a hearing last fall,” but had not yet received the hearing order. EAB Exhibit 1. Claimant also stated that she did not know how to appeal “the decision for August 8 to Sept 4 2021.” EAB Exhibit 1. Claimant stated that she understood that should could appeal after the ALJ “made their ruling,” and stated that, “any help [was] appreciated.” EAB Exhibit 1.

(5) On January 11, 2022, claimant filed a late application for review of Order No. 21-UI-79008 with EAB.

(6) On January 28, 2022, claimant submitted a web form document to the Department in which she described previous requests to the Department for information about the result of the October 29, 2021 hearing. EAB Exhibit 2. Claimant stated that she finally received a copy of Order No. 21-UI-179008 on January 26, 2022 in an envelope postmarked on January 12, 2022. EAB Exhibit 2.

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 21-UI-179008 is allowed. Claimant was not available for work during the weeks including August 8, 2021 through September 4, 2021 (weeks 32-21 through 35-21).

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).

An application for review may be filed on forms provided by OAH or the Employment Department and other similar offices in other states. Use of the form is not required, provided the applicant requests review of a specific ALJ Order, or otherwise expresses intent to appeal an ALJ Order. OAR 471-041-0060(1) (May 13, 2019).

An application for review of Order No. 21-UI-179008 was due on November 24, 2021. Claimant's January 11, 2022 email to the Department constituted an application for review because claimant expressed a present intent to appeal Order No. 21-UI-179008. Claimant identified the hearing order she wished to appeal by describing the subject matter of the order, and showed that she intended to appeal the order by requesting "help" after stating that she did not know how to appeal the decision from the hearing she had identified. *See* OAR 471-041-0060(1). Because claimant filed her application for review on January 11, 2022, the application for review was late. In her application for review, claimant included a written statement describing the circumstances that prevented a timely filing. The application for review stated that claimant did not receive "a decision letter" from the hearing regarding the relevant time period. EAB Exhibit 1. Claimant's apparent failure to receive Order No. 21-UI-179008 in the regular course of the mail constituted a circumstance beyond claimant's reasonable control that prevented a timely filing.

The Department mailed another copy of Order No. 21-UI-179008 to claimant in an envelope postmarked January 12, 2022, which claimant did not receive until January 26, 2022. EAB Exhibit 2. Accordingly, it may reasonably be inferred that claimant first learned that an order from the October 29, 2021 hearing denied her benefits only a couple of days before January 12, 2022, when claimant spoke to a Department representative about the results of the hearing. The representative apparently mailed claimant a copy of Order No. 21-UI-179008 based on claimant's request. Because claimant filed her late application for review by email within a couple of days of learning of the result of the October 29, 2022 hearing from a Department representative, ending the circumstance that caused the late filing, claimant filed her application for review within a reasonable time under OAR 471-041-0070(2)(b). For these reasons, claimant's late application for review is allowed.

Order No. 21-UI-179008. EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), Order No. 21-UI-179008, concluding that claimant was not available for work or therefore eligible for benefits from August 8, 2021 through September 4, 2021 (weeks 32-21 through 35-21), is **adopted**.

DECISION: Claimant's late application for review of Order No. 21-UI-179008 is allowed. Order No. 21-UI-179008 is affirmed.

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

DATE of Service: February 23, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>.

You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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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