

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0121

Late Application for Review Allowed
Order No. 21-UI-176257 Reversed & Remanded

PROCEDURAL HISTORY: On June 15, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible for PUA benefits effective December 27, 2020. On July 6, 2021, the June 15, 2021 administrative decision became final without claimant having filed a request for hearing. On September 19, 2021, claimant filed a late request for hearing on the June 15, 2021 administrative decision. ALJ Kangas considered claimant's request, and on October 4, 2021 issued Order No. 21-UI-176257, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 18, 2021. On October 25, 2021, Order No. 21-UI-176257 became final without claimant having filed a response to the appellant questionnaire with the Office of Administrative Hearings (OAH) or an application for review with the Employment Appeals Board (EAB). On October 26, 2021, claimant filed a late response to the appellant questionnaire and a late application for review of Order No. 21-UI-176257 with EAB. On January 19, 2022, ALJ Kangas mailed a letter stating that OAH would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late. This matter comes before EAB based upon claimant's October 26, 2021 application for review of Order No. 21-UI-176257.

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 October 26, 2021 response to the appellant questionnaire and documents attached thereto, 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.

FINDINGS OF FACT: (1) On June 15, 2021, the Department mailed the June 15, 2021 administrative decision to claimant's address on file with the Department. The June 15, 2021 administrative decision

stated, “You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by July 6, 2021.” Exhibit 1 at 2.

(2) Order No. 21-UI-176257, mailed to claimant on October 4, 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-176257 at 2. Order No. 21-UI-176257 also stated on its Certificate of Mailing, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than October 25, 2021.”

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 21-UI-176257 is allowed. Order No. 21-UI-176257 is set aside and this matter remanded for a hearing on whether claimant’s late request for hearing on the June 15, 2021 administrative decision 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-176257 was due by October 25, 2021. Because claimant did not file her application for review until October 26, 2021, the application for review was late. Claimant enclosed with the application for review and appellant questionnaire response a letter from her mother dated October 25, 2021. In that letter, claimant’s mother stated that claimant “[d]id not receive her mail from me in time to make this deadline . . . [because] I’ve been sick with COVID and haven’t made it to my P.O. box for several days.” EAB Exhibit 1 at 3. It is reasonable to infer from this statement that the order under review was delivered to claimant’s mother’s P.O. Box, that claimant did not have access to the box, and that claimant therefore did not receive the order under review until the date of the timely filing deadline for the application for review of October 25, 2021. In such circumstances, it is also reasonable to infer that receiving the order under review on the deadline for filing the application for review did not give claimant sufficient time to file the application for review on the same day. Therefore, because claimant did not receive the order under review until October 25, 2021, claimant filed the application for review late due to factors beyond her reasonable control. Those factors ceased the same day, when she received the order under review. Because claimant filed the application for review one day later, she filed it within seven days of when the factors that caused her to file the late application for review ceased, and therefore had good cause to file the late application for review.

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 the June 15, 2021 administrative decision was due by July 6, 2021. Because claimant did not submit her request for hearing until September 19, 2021, the request was late. On her appellant questionnaire response, claimant stated that she did not submit the request for hearing by the timely filing deadline because she “didn’t receive [the administrative decision] due to our mail being . . . [illegible]. . .” EAB Exhibit 1 at 11. Claimant also noted in a statement attached to the response that she “never received [the] determination on June 6th [sic] from the unemployment office”; and that she waited for a response from the Department by email or mail but only got letters explaining that they were not paying her benefits because an issue was still being resolved on her claim. EAB Exhibit 1 at 8. If claimant did not receive the June 15, 2021 administrative decision prior to the timely filing deadline, claimant may have filed the late request for hearing due to factors beyond her reasonable control. However, further information is needed to determine whether claimant had good cause to file the late request for hearing. On remand, the ALJ should inquire as to what issues claimant was having with her mail during the relevant period; when, if at all, claimant received the June 15, 2021 administrative decision; how and when claimant became aware of the administrative decision if she never received it; what prompted her to file the request for hearing on September 19, 2021; and whether that was within seven days after the factors which caused her to file the late request for hearing ceased to exist, such that she filed the request within a reasonable time.

Order No. 21-UI-176257 therefore is reversed, and this matter remanded for a hearing on whether claimant’s late request for hearing should be allowed and, if so, the merits of the June 15, 2021 administrative decision.

DECISION: Order No. 21-UI-176257 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: January 26, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-176257 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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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