

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0180

Order No. 21-UI-180572 Affirmed ~ Late Request for Hearing Dismissed
Order No. 21-UI-167519 ~ Late Application for Review Dismissed

PROCEDURAL HISTORY: On May 14, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective March 24, 2019 (decision # 70849). On June 3, 2019, decision # 70849 became final without claimant having filed a request for hearing. On July 29, 2019, the Department served notice of administrative decision, based in part on decision # 70849, concluding that claimant received unemployment insurance benefits to which they were not entitled and assessing an overpayment of \$794 in regular benefits (decision # 133746). On August 19, 2019, decision # 133746 became final without claimant having filed a request for hearing. On May 11, 2021, claimant filed late requests for hearing on decisions # 70849 and 133746.

ALJ Kangas considered claimant's late request for hearing on decision # 133746, and on May 26, 2021 issued Order No. 21-UI-167519, dismissing claimant's request for hearing on decision # 133746 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by June 9, 2021. On June 15, 2021, Order No. 21-UI-167519 became final without claimant having filed a response to the appellant questionnaire, or an application for review with the Employment Appeals Board (EAB). ALJ Kangas considered claimant's late request for hearing on decision # 70849, and on November 29, 2021 issued Order No. 21-UI-180572, dismissing claimant's request for hearing on decision # 70849 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by December 13, 2021.

On December 14, 2021, claimant filed late responses to the appellant questionnaires for Orders No. 21-UI-167519 and 21-UI-180572, a late application for review of Order No. 21-UI-167519 with EAB, and a timely application for review of Order No. 21-UI-180572 with EAB. On January 18, 2022, ALJ Kangas mailed letters to claimant stating that because claimant's responses to the appellant questionnaires for Orders No. 21-UI-167519 and 21-UI-180572 were late, they would not be considered, new orders would not be issued, and Orders No. 21-UI-167519 and 21-UI-180572 remained in effect. This matter comes before EAB based upon claimant's December 14, 2021 late application for review of Order No. 21-UI-167519 and December 14, 2021 timely application for review of Order No. 21-UI-180572.

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 responses to the appellant questionnaires for Orders No. 21-UI-167519 and 21-UI-180572, and a copy of decision # 70849. These documents have been marked as EAB Exhibit 1¹ and EAB Exhibit 2, respectively, and copies provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1 and 2 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.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-167519 and 21-UI-180572. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0179 and 2022-EAB-0180).

FINDINGS OF FACT: (1) On May 14, 2019, the Department mailed decision # 70849 to claimant’s address on file with the Department. Decision # 70849 stated, “You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than June 3, 2019.” EAB Exhibit 2 at 2. Decision # 70849 provided a mailing address and a fax number for use in contacting the Department. EAB Exhibit 2 at 1. Claimant received decision # 70849 at some point after it was mailed.

(2) On May 16, 2019, claimant travelled to Fiji and returned to Oregon at the end of September 2019. EAB Exhibit 1.

(3) Order No. 21-UI-167519, mailed to claimant on May 26, 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-167519 at 2. Order No. 21-UI-167519 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 June 15, 2021.”

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 21-UI-167519 is dismissed. Order No. 21-UI-180572, which dismissed claimant’s late request for hearing on decision # 70849, is affirmed.

Order No. 21-UI-180572 – 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.

On May 14, 2019, the Department mailed decision # 70849 to claimant’s address on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on that decision was

¹ Because claimant’s appellant questionnaire responses related to Orders No. 21-UI-167519 and 21-UI-180572 are identical, EAB has combined the responses into one EAB Exhibit as a matter of efficiency.

June 3, 2019. Claimant did not file a request for hearing on decision # 70849 until May 11, 2021. Accordingly, claimant's request for hearing was late.

In their appellant questionnaire response, claimant stated that they did not request a hearing before the June 3, 2019 deadline because on May 16, 2019 they had travelled to Fiji and did not return to Oregon until late September 2019. EAB Exhibit 1. Claimant's appellant questionnaire response suggests that claimant may have initially had good cause to file a late request for hearing because the Department's May 14, 2019 mailing of decision # 70849 may have overlapped with their departure for Fiji two days later on May 16, 2019. As such, claimant may not have received decision # 70849 until they returned to Oregon in late September 2019, which was well beyond the June 3, 2019 filing deadline. Under these circumstances, the record suggests that claimant may not have been able to meet the 20-day deadline due to circumstances beyond their reasonable control.

However, even if claimant's ability to timely file their request for hearing was impeded by their travel, OAR 471-040-0010 also requires that claimant file their late request for hearing within a "reasonable time," and defines "reasonable time" as seven days after the factor which impeded timely filing ceased to exist. Here, the factor that prevented claimant from filing a timely request for hearing - their travel to Fiji - ceased to exist at the end of September 2019 when they returned from their travel. Notably, although the record does not establish the exact date that claimant received decision # 70849, claimant did not dispute in their appellant questionnaire response that they received the decision, or otherwise try to rebut the presumption that claimant received it in the regular course of mail. *See* ORS 40.135(1)(q) (providing that a presumption under the State of Oregon Evidence Code is that "[a] letter duly directed and mailed was received in the regular course of the mail."). Accordingly, claimant needed to file their late request for hearing on or before October 7, 2019, which was seven days after their late September 2019 return from Fiji, in order to meet the "reasonable time" requirement. Claimant did not file their late request for hearing until May 11, 2021, which was outside of the "reasonable time" window. Because claimant failed to file their late request for hearing within a reasonable time, claimant's late request for hearing is dismissed.

Order No. 21-UI-167519 – 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-167519 was due by June 15, 2021. Because claimant did not file their application for review until December 14, 2021, the application for review was late. Claimant provided a written statement with the application for review. However, claimant's written statement did not describe the circumstances that prevented claimant from filing the application for review on time. Accordingly, claimant did not show good cause for the late application for review, and claimant's late application for review is dismissed.

DECISION: Order No. 21-UI-180572 is affirmed. The late application for review of Order No. 21-UI-167519 filed on December 14, 2021 is dismissed. Order No. 21-UI-167519 remains undisturbed.

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

DATE of Service: February 3, 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 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 الإستئناف 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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