

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0350

Order No. 22-UI-184824 ~ Late Application for Review Allowed ~ Reversed ~ Merits Hearing Required
Order No. 22-UI-184830 ~ Reversed ~ Merits Hearing Required

PROCEDURAL HISTORY: On September 28, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not eligible to receive Pandemic Emergency Unemployment Compensation (PEUC) for the week of March 28, 2021 through April 3, 2021 (week 13-21) (decision # 90349). Also on September 28, 2021, the Department served notice of an administrative decision concluding that claimant was not eligible to receive PEUC for the week of July 18, 2021 through July 24, 2021 (week 29-21) (decision # 90907). On October 18, 2021, decisions # 90349 and 90907 became final without claimant having filed requests for hearing. On November 6, 2021, claimant filed late requests for hearing on decisions # 90349 and 90907. ALJ Kangas considered claimant's requests, and on January 25, 2022, issued Order No. 22-UI-184824, dismissing claimant's request for hearing on decision # 90349 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 8, 2022. On January 26, 2022, ALJ Kangas issued Order No. 22-UI-184830, dismissing claimant's request for hearing on decision # 90907 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 9, 2022.

On February 15, 2022, claimant filed a late response to the appellant questionnaires, a late application for review of Order No. 22-UI-184824 with the Employment Appeals Board (EAB), and a timely application for review of Order No. 22-UI-184830 with EAB. On March 15, 2022, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue an additional order regarding decision # 90349 because the questionnaire response was late. On March 16, 2022, ALJ Kangas mailed a letter stating that OAH would not consider claimant's questionnaire response or issue an additional order regarding decision # 90907 because the questionnaire response was late. These matters come before EAB based on claimant's February 15, 2022 late application for review of Order No. 22-UI-184824 and timely application for review of Order No. 22-UI-184830.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-184824 and 22-UI-184830. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0349 and 2022-EAB-0350).

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 questionnaire responses, and has been marked as EAB Exhibits 1 and 2, 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.

FINDINGS OF FACT: (1) During the summer of 2021, claimant became "extremely sick" and on July 23, 2021, was diagnosed as a COVID-19 "long-hauler." EAB Exhibit 1 at 1.

(2) On September 28, 2021, the Department mailed decision # 90349 to claimant's address on file with the Department. Decision # 90349 stated, "Any appeal from this decision must be filed on or before October 18, 2021 to be timely." Exhibit 1 at 2.

(3) On September 28, 2021, the Department mailed decision # 90907 to claimant's address on file with the Department. Decision # 90907 stated, "Any appeal from this decision must be filed on or before October 18, 2021 to be timely." Exhibit 1 at 2.

(4) Claimant was in the care of their father in Salem, Oregon and therefore away from their home in Portland, Oregon for "four weeks," from approximately October 8, 2021 until November 5, 2021. EAB Exhibit 1 at 1. Claimant had pneumonia and spent October 2021 through January 2022 "in and out" of the emergency room and hospital. EAB Exhibit 1 at 1.

(5) Claimant has "severe cognitive and physical impairments" due to "long-haulers" COVID-19. EAB Exhibit 1 at 1.

(6) Claimant spoke with a representative from the Department on or about November 5, 2021. On November 6, 2021, claimant requested a hearing on decisions # 90349 and 90907. Exhibit 2 at 2.

(7) Order No. 22-UI-184824, mailed to claimant on January 25, 2022, 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. 22-UI-184824 at 2. Order No. 22-UI-184824 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 February 14, 2022."

(8) Order No. 22-UI-184830, mailed to claimant on January 26, 2022, 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. 22-UI-184830 at 2. Order No. 22-UI-184830 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 February 15, 2022."

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 22-UI-184824 is allowed. Claimant's late requests for hearing on decisions # 90349 and 90907 are allowed. Claimant is entitled to a hearing on the merits of decisions # 90349 and 90907.

Late application for review of Order No. 22-UI-184824. 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. 22-UI-184824 was due February 14, 2022. Because claimant did not file their application for review of that order until February 15, 2022, the application for review was late. Claimant provided a written statement with the application for review of Order No. 22-UI-184824. EAB Exhibit 1. OAH mailed Order No. 22-UI-184824 to claimant on January 25, 2022. One day later, OAH mailed Order No. 22-UI-184830 to claimant. Because the orders were mailed one day apart, the application for review of Order No. 22-UI-184824 was due February 14, 2022, and the application for review of Order No. 22-UI-184830 was due by February 15, 2022. Claimant filed their applications for review of Orders No. 22-UI-184824 and 22-UI-184830 together, by fax, on February 15, 2022, which was the deadline for a timely application for review of Order No. 22-UI-184830. Claimant’s written statement states that claimant has “severe cognitive and physical impairments” due to “long-haulers” COVID-19. Based on claimant’s impairments and the fact that the two orders had stated similar deadlines to apply for review, only one day apart, it is reasonable to infer that claimant’s impairments were a factor beyond claimant’s reasonable control that prevented them from filing the application for review of Order No. 22-UI-184824 on time. Because claimant filed the application for review of Order No. 22-UI-184824 within seven days after the timely filing deadline, claimant filed their application for review within a reasonable time after the circumstances that prevented the timely filing ceased to exist. Accordingly, claimant has shown good cause for their late application for review of Order No. 22-UI-184824, and claimant’s late application for review is allowed.

Late requests 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.

Claimant’s requests for hearing on decisions # 90349 and 90907 were due by October 18, 2021. Because claimant did not request a hearing on those decisions until November 6, 2021, their requests for hearing were late. However, claimant’s appellant questionnaire response shows that claimant had good cause for their late requests for hearing and that the late requests for hearing should be allowed.

Claimant was ill with COVID-19 and pneumonia from approximately October 8, 2021 until November 5, 2021, during which time they were not at their residence in Portland because they were under the care of their father in Salem, or in the hospital. It is therefore reasonable to presume that claimant's medical condition and inability to be at their residence were factors beyond claimant's reasonable control that prevented them from requesting a hearing on decisions # 90349 and 90907 on time. Claimant therefore had good cause to extend the filing deadlines. The circumstances that prevented a timely filing ceased to exist on November 5, 2021 when claimant returned to their residence. Claimant requested a hearing regarding decisions # 90349 and 90907 one day later, on November 6, 2021. Claimant's late filings were therefore within the seven-day reasonable time period. Claimant established good cause to extend the filing period a reasonable time. Their late requests for hearing on decisions # 90349 and 90907 are therefore allowed, and claimant is entitled to a hearing on the merits of both decisions.

DECISION: Orders No. 22-UI-184824 and 22-UI-184830 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: March 31, 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

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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