

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0389

Late Application for Review Allowed
Order No. 2021-UI-179946 Reversed & Remanded

PROCEDURAL HISTORY: On June 2, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was denied benefits for the weeks from March 29, 2020 through May 9, 2020 because he filed late claims for benefits for those weeks (decision # 141558). On June 22, 2021, decision # 141558 became final without claimant having filed a timely request for hearing. On September 21, 2021 claimant filed a late request for hearing. ALJ Kangas reviewed claimant's request, and on November 17, 2021 issued Order No. 21-UI-179946, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by December 1, 2021. On December 7, 2021, Order No. 21-UI-179946 became final without claimant having filed a response to the appellant questionnaire or an application for review of Order No. 21-UI-179946 with the Employment Appeals Board (EAB).

On January 18, 2022, claimant filed a document with the Office of Administrative Hearings (OAH) that OAH construed as a late response to the appellant questionnaire. On March 15, 2022, ALJ Kangas mailed a letter stating that because claimant's response was late, it would not be considered, another order would not be issued, and Order No. 21-UI-179946 therefore remained in effect. On March 24, 2022 claimant filed with EAB a document that was construed as a late application of review of Order No. 21-UI-179946.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence includes claimant's March 24, 2022 late application for review of Order No. 21-UI-179946 that has been marked as EAB Exhibit 1; a copy of claimant's January 18, 2022 late response to the appellant questionnaire that has been marked as EAB Exhibit 2; and a copy of Order No. 21-UI-179946 mailed to claimant on November 17, 2021 and returned as undeliverable that has been marked as EAB Exhibit 3. Copies of EAB Exhibits 1, 2 and 3 have been provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1, 2 or 3 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) On June 2, 2021, the Department mailed the June 2, 2021 administrative decision to claimant's address on file with the Department. The June 2, 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 June 22, 2021." Exhibit 1 at 2.

(2) Order No. 21-UI-179946, mailed to claimant on November 17, 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-179946 at 2. Order No. 21-UI-179946 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 December 7, 2021."

(3) On January 19, 2022, the Office of Administrative Hearings (OAH) received the copy of Order No. 21-UI-179946 that had been mailed to claimant, which was returned as undeliverable. EAB Exhibit 3 at 15. Claimant filed his application for review of Order No. 21-UI-179946 late because he never received Order No. 21-UI-179946 in the mail, and was unaware that it had been issued.

CONCLUSIONS AND REASONS: Claimant's late application for review is allowed. Order No. 21-UI-179946 is reversed, and this matter remanded to OAH for a hearing on whether claimant's late request for hearing on decision #141558 should be allowed and, if so, the merits of that decision.

Late Application for Review. The first issue before EAB is whether claimant's late application for review of Order No. 21-UI-179946 should be allowed. 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).

Claimant's application for review of Order No. 21-UI-179946 was due no later than December 7, 2021. Because claimant did not file his application for review until March 24, 2022, the application for review was late. However, the statement included with claimant's application for review indicates that it was late because claimant never received Order No. 21-UI-179946 in the mail and was unaware that it had been issued, which is supported by claimant's response to the appellant questionnaire and the fact that the copy of Order No. 21-UI-179946 mailed to claimant was returned to OAH as undeliverable. EAB Exhibits 1-3. Claimant's failure to receive Order No. 21-UI-179946 was a circumstance beyond claimant's reasonable control that prevented a timely filing. Further, because the record shows that claimant was unaware that Order No. 21-UI-179946 had been issued, the circumstances that prevented claimant from timely filing the application for review continued through the date that claimant filed the late application for review. Claimant therefore filed the application for review within a reasonable time. Claimant's late application for review of Order No. 21-UI-179946 therefore is allowed.

Late Request for Hearing. The second issue before EAB is whether claimant's late request for hearing on the June 2, 2021 administrative decision should be allowed. 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 deadline to file a timely request for hearing on decision # 141558 was June 22, 2021. Claimant filed their request for hearing on September 21, 2021. Therefore, the request for hearing was late. Order No. 21-UI-179946 was mailed with an appellant questionnaire that, had claimant received the order, would have notified him of his right to renew his hearing request by explaining the circumstances that caused him to file the request late. Exhibit 3. However, as noted above, the record shows that claimant never received Order No. 21-UI-179946. Claimant therefore did not have a reasonable opportunity for a fair hearing, including a full and fair inquiry into the facts necessary for consideration of whether his late request for hearing on decision # 141558 should be allowed, as required under ORS 657.270.

Nevertheless, the document OAH construed as a late response to the appellant questionnaire indicates that factors beyond claimant's reasonable control may have prevented him from filing a timely request for hearing, and that claimant may have filed his late request for hearing within a reasonable time after those factors ceased to exist. EAB Exhibit 2. Order No. 21-UI-179946 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 decision # 141558.

DECISION: Claimant's late application for review of Order No. 21-UI-179946 is allowed. Order No. 21-UI-179946 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: April 28, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-179946 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 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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