

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0445

Late Application for Review Allowed
Order No. 21-UI-175334 ~ Reversed & Remanded

PROCEDURAL HISTORY: On June 14, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was denied unemployment insurance benefits effective June 21, 2020 because she quit working for the employer without good cause (decision #152306). On July 6, 2021, decision #152306 became final without claimant having filed a request for hearing. On September 13, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on September 22, 2021 issued Order No. 21-UI-175334, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 6, 2021. On October 12, 2021, Order No. 21-UI-175334 became final without claimant having filed a response to the appellant questionnaire or an application for review of Order No. 21-UI-175334 with the Employment Appeals Board (EAB). On March 25, 2022 claimant filed a late response to the appellant questionnaire with the Office of Administrative Hearings (OAH) and a late application for review of order No. 21-UI-175334 with EAB. On May 3, 2022, ALJ Kangas mailed a letter to claimant stating that because claimant's response to the appellant questionnaire was late, OAH would not consider it or issue another order, and that Order No. 21-UI-175334 remained in effect. This matter comes before EAB based on claimant's March 25, 2022 late application for review of Order No. No. 21-UI-175334.

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 March 25, 2022 late application for review of Order No. 21-UI-175334, 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) In May 2021 claimant moved from Oregon to New York. On or about June 2021 claimant provided the Department with her updated address. Claimant began receiving mail from the Department at the New York address. EAB Exhibit 1 at 1.

(2) On June 14, 2021, the Department mailed decision #152306 to claimant's prior address in Oregon. Decision #152306 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. Claimant did not receive the decision. EAB Exhibit 1.

(3) On September 13, 2021 Claimant requested an appeal of an over-payment letter claimant received through the Department's help desk. The request was construed as a late request for hearing of decision #152306 and forwarded to the Office of Administrative Hearings (OAH). Exhibit 2.

(4) On September 22, 2021 OAH mailed Order No. 21-UI-175334 to claimant's previous address in Oregon. Order No. 21-UI-175334 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-175334 at 2. Order No. 21-UI-175334 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 12, 2021." Claimant did not receive Order No. 21-UI-175334. EAB Exhibit 1.

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 21-UI-175334 is allowed. Order No. 21-UI-175334 is set aside and this matter remanded for additional proceedings to determine whether claimant's late request for hearing on decision #152306 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-175334 should be allowed. 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).

Claimant's application for review of Order No. 21-UI-175334 was due no later than October 12, 2021. Because claimant did not file their application for review until March 25, 2022, the application for review was late. However, claimant's application for review indicates that claimant did not receive a copy of Order No. 21-UI-175334. This constituted circumstances beyond claimant's reasonable control because the order was sent to the wrong address, as shown on the Certificate of Mailing. Further, because the record shows that claimant was unaware that Order No. 21-UI-175334 had been issued until March 24, 2022, the circumstances that prevented claimant from timely filing the application for review therefore continued until then, and claimant's March 25, 2022 application for review was filed within a reasonable time. Claimant's late application for review of Order No. 21-UI-175334 is therefore allowed.

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 14, 2021 administrative decision was due by July 6, 2021. Because claimant did not file the request for hearing until September 13, 2021, the request for hearing was late. Order No. 21-UI-175334 was mailed with an appellant questionnaire response that, had claimant received the order, would have notified them of their right to renew the hearing request by explaining the circumstances that caused them to file the request late. However, as noted above, the record shows that claimant did not receive Order No. 21-UI-175334 because it was sent to the wrong address. Order No. 21-UI-175334 Certificate of Mailing, EAB Exhibit 1. 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 her late request for hearing on decision # #152306 should be allowed, as required under ORS 657.270. Nevertheless, claimant’s application for review indicates that factors beyond her reasonable control may have prevented her from filing a timely request for hearing, and that claimant may have filed her late request for hearing within a reasonable time after those factors ceased to exist. EAB Exhibit 1. For example, the record is insufficient to determine whether the claimant notified the Department in a timely fashion of her new address and whether the change of address occurred before the Department mailed administrative decision #152306. Order No. No. 21-UI-175334 therefore is reversed, and this matter remanded for a hearing on whether claimant’s late request for hearing on decision #152306 should be allowed and, if so, the merits of that decision.

DECISION: Claimant’s late application for review of 21-UI-175334 is allowed. Order No. 21-UI-175334 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: May 4, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. No. 21-UI-175334 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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