

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0517

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On December 16, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work or able to work during each of the weeks including November 7, 2021 through December 11, 2021 (weeks 45-21 through 49-21) and was therefore ineligible to receive unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 82420). Also on December 16, 2021, the Department served notice of an administrative decision concluding that claimant was not actively seeking work during the week of November 14, 2021 through November 20, 2021 (week 46-21) and was therefore ineligible to receive benefits during that week (decision # 85849). Also on December 16, 2021, the Department served notice of an administrative decision concluding that claimant was not actively seeking work during the week of November 21, 2021 through November 27, 2021 (week 47-21) and was therefore ineligible to receive unemployment insurance benefits during that week (decision # 93642). Also on December 16, 2021, the Department served notice of an administrative decision concluding that claimant was not actively seeking work during the week of November 28, 2021 through December 4, 2021 (week 48-21) and was therefore ineligible to receive benefits during that week (decision # 94313). Also on December 16, 2021, the Department served notice of an administrative decision concluding that claimant was not actively seeking work during the week of December 5, 2021 through December 11, 2021 (week 49-21) and was therefore ineligible to receive benefits during that week (decision # 94640). Also on December 16, 2021, the Department generated an administrative decision concluding that claimant was not actively seeking work during the weeks including November 21, 2021 through December 11, 2021 (weeks 47-21 through 49-21) and was therefore ineligible to receive benefits during those weeks (decision # 91826); however, the Department generated decision # 91826 in error, did not serve it on claimant, and the decision never took effect.

Claimant filed a timely request for hearing on decisions # 82420, 85849, 93642, 94313, and 94640. At that time, decision # 91826 was also erroneously referred to the Office of Administrative Hearings (OAH) for a hearing. On January 25, 2022, ALJ Monroe conducted a consolidated hearing on decisions # 82420, 85849, 93642, 94313, 94640, and 91826. On January 31, 2022, ALJ Monroe issued Order No.

22-UI-185189, modifying¹ decision # 82420 by concluding that claimant was unable to work, and therefore ineligible to receive benefits, during the weeks including November 7, 2021 through January 8, 2022 (weeks 45-21 through 01-22); Order No. 22-UI-185174, affirming decision # 85849; Order No. 22-UI-185175, affirming decision # 93642; Order No. 22-UI-185177, affirming decision # 94313; Order No. 22-UI-185171, affirming decision # 94640; and Order No. 22-UI-185173, dismissing the request for hearing on decision # 91826 for lack of a justiciable controversy. On February 22, 2022, Orders No. 22-UI-185189, 22-UI-185174, 22-UI-185175, 22-UI-185177, 22-UI-185171, and 22-UI-185173 became final without claimant having filed applications for review with the Employment Appeals Board (EAB). On April 15, 2022, claimant filed late applications for review of Orders No. 22-UI-185189, 22-UI-185174, 22-UI-185175, 22-UI-185177, 22-UI-185171, and 22-UI-185173 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-185189, 22-UI-185174, 22-UI-185175, 22-UI-185177, 22-UI-185171, and 22-UI-185173. For case-tracking purposes, this decision is being issued in sextuplicate (EAB Decisions 2022-EAB-0519, 2022-EAB-0517, 2022-EAB-0518, 2022-EAB-0520, 2022-EAB-0515, and 2022-EAB-0516).

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 statement attached to the April 15, 2021 application for review, 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(s) will remain in the record.

FINDINGS OF FACT: (1) Order No. 22-UI-185189, mailed to claimant on January 31, 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-185189 at 4. Order No. 22-UI-185189 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before February 22, 2022 to be timely."

(2) Order No. 22-UI-185174, mailed to claimant on January 31, 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-185174 at 3. Order No. 22-UI-185174 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before February 22, 2022 to be timely."

(3) Order No. 22-UI-185175, mailed to claimant on January 31, 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-185175 at 3. Order No. 22-UI-185175 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before February 22, 2022 to be timely."

¹ The order under review stated that "the administrative decision (#82420) mailed December 16, 2021 is *affirmed*." Order No. 22-UI-185189 at 3 (emphasis added). However, as the order under review took jurisdiction over additional weeks claimed after decision # 82420 was issued, and concluded that claimant was ineligible for benefits during those weeks as well, the order *modified* the administrative decision.

(4) Order No. 22-UI-185177, mailed to claimant on January 31, 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-185177 at 3. Order No. 22-UI-185177 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before February 22, 2022 to be timely.”

(5) Order No. 22-UI-185171, mailed to claimant on January 31, 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-185171 at 3. Order No. 22-UI-185171 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before February 22, 2022 to be timely.”

(6) Order No. 22-UI-185173, mailed to claimant on January 31, 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-185173 at 2. Order No. 22-UI-185173 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before February 22, 2022 to be timely.”

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 22-UI-185189, 22-UI-185174, 22-UI-185175, 22-UI-185177, 22-UI-185171, and 22-UI-185173 are dismissed.

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 applications for review of Orders No. 22-UI-185189, 22-UI-185174, 22-UI-185175, 22-UI-185177, 22-UI-185171, and 22-UI-185173 were due by February 22, 2022. Because claimant did not file their applications for review until April 15, 2022, the applications for review were late. Claimant provided a written statement with the applications for review. However, claimant’s written statement did not describe the circumstances that prevented him from filing the applications for review on time. Accordingly, claimant did not show good cause for the late applications for review, and claimant’s late applications for review are dismissed.

DECISION: The applications for review filed April 15, 2022 are dismissed. Orders No. 22-UI-185189, 22-UI-185174, 22-UI-185175, 22-UI-185177, 22-UI-185171, and 22-UI-185173 remain undisturbed.

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

DATE of Service: May 6, 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 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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