

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0539

Late Applications for Review Allowed ~ Reversed & Remanded

*Las Aplicaciones Tardías Para Revisión De Las Órdenes Judiciales Son Permitidas
Revocadas y Remitidas Para Otra Audiencia*

PROCEDURAL HISTORY: On August 14, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective March 1, 2020 (decision # 141438). On September 3, 2020, decision # 141438 became final without claimant having filed a request for hearing. On November 13, 2020, the Department served notice of an administrative decision based in part on decision # 141438, concluding that claimant failed to report a material fact to obtain unemployment insurance benefits, and assessing a \$628 overpayment of regular unemployment insurance benefits and a \$1,200 overpayment of Federal Pandemic Unemployment Compensation (FPUC) (decision # 155957). On December 2, 2020, claimant filed a late request for hearing on decision # 141438 and a timely request for hearing on decision # 155957. On August 26, 2021, ALJ Monroe conducted hearings on decisions # 141438 and 155957, and on September 3, 2021 issued Order No. 21-UI-173974 dismissing claimant's request for hearing on decision # 141438 as late without good cause, and leaving that decision undisturbed, and Order No. 21-UI-173975 affirming decision # 155957. On September 23, 2021, Orders No. 21-UI-173974 and 21-UI-173975 became final without claimant having filed applications for review with the Employment Appeals Board (EAB).

On May 3, 2022, claimant filed late applications for review of Orders No. 21-UI-173974 and 21-UI-173975 with EAB. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-173974 and No. 21-UI-173975. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0538 and 2022-EAB-0539).

WRITTEN ARGUMENT: EAB considered claimant’s written argument when reaching this decision.

ARGUMENTO POR ESCRITO: *EAB consideró el argumento por escrito de la reclamante.*

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the written statement claimant provided with their late applications 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 will remain in the record.

FINDINGS OF FACT: (1) Claimant does not speak or read English.

(2) On August 14, 2020, the Department mailed decision # 141438 to claimant’s address on file with the Department. Decision # 141438 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 September 3, 2020.” Order No. 21-UI-173974, Exhibit 1 at 2.

(3) On November 13, 2020, the Department mailed decision # 155957 to claimant’s address on file with the Department. Decision # 155957 stated that claimant had the right to appeal the decision if claimant disagreed with the overpayment amount decision and that any appeal from the decision must be filed by December 3, 2020 to be timely. Claimant received decision # 155957.

(4) At some point after August 14, 2020, claimant received a “letter” from the Department in the mail. Order No. 21-UI-173974, Transcript at 7. Claimant reviewed the letter, which contained an appeal deadline. Claimant disagreed with the contents of the letter and wished to appeal it.

(5) The letter claimant received prompted her to file requests for hearing on decisions # 141438 and 155957 on December 2, 2020.

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 21-UI-173974 and No. 21-UI-173975 are allowed. Orders No. 21-UI-173974 and 21-UI-173975 are reversed, and the matters remanded for further development of the record.

CONCLUSIONES Y RAZONES: *Las aplicaciones tardías de la reclamante para revisión de las Órdenes Judiciales No. 21-UI-173974 y 21-UI-173975 son permitidas. Las Órdenes Judiciales No. 21-UI-173974 y 21-UI-173975 se ponen a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*

Late Applications 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 applications for review of Orders No. 21-UI-173974 and No. 21-UI-173975 were due by September 23, 2021. Because claimant did not file her applications for review until May 3, 2022, the applications for review were late. Claimant provided a written statement with the applications for review. In it, claimant explained that she did not receive Orders No. 21-UI-173974 and No. 21-UI-173975 in the mail and did not become aware of either order until April 27, 2022. EAB Exhibit 1 at 1. Claimant became aware of the orders on that date because they were included in a packet the Department sent to claimant, which represented her "Oregon Employment Department file." EAB Exhibit 1 at 1.

Claimant's evidence is sufficient to show that claimant failed to file timely applications for review because she did not receive Orders No. 21-UI-173974 and No. 21-UI-173975 in the mail, which was a circumstance beyond her reasonable control. Claimant filed her applications for review on May 3, 2022, which was within seven days of the April 27, 2022 date that claimant received Orders No. 21-UI-173974 and No. 21-UI-173975. Claimant therefore filed her applications for review within a reasonable time after the circumstances that prevented a timely filing ceased to exist. Claimant therefore established good cause to extend the filing deadline to May 3, 2022, and the late applications for review are 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.

OAR 471-040-0010(2) provides that "good cause for failing to file a timely request for hearing shall exist when the appellant provides satisfactory evidence that the Employment Department failed to follow its policies with respect to providing service to a limited English proficient person, including the failure to communicate orally or in writing in a language that could be understood by the limited English proficient person upon gaining knowledge that the person needed or was entitled to such assistance."

On August 14, 2020, the Department mailed decision # 141438 to claimant at claimant's address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on that decision was September 3, 2020. Claimant did not file a request for hearing on decision # 141438 until December 2, 2020. Accordingly, claimant's request for hearing was late.

The order under review found that claimant received decision # 141438 after the Department mailed it to her and concluded that claimant failed to timely file an appeal and did not show good cause to extend the deadline to timely file. Order No. 21-UI-173974 at 2, 3-4. The record as developed does not support these findings and conclusions.

At hearing, claimant initially testified that she had not received decision # 141438. Order No. 21-UI-173974, Transcript at 7. Further, based on claimant's testimony, the record suggests that the "letter"

claimant received prompting her appeal may have been decision # 155957, the overpayment decision for which claimant timely requested a hearing. This possibility is bolstered by the fact that at one point during the hearing, claimant appeared to confirm that the overpayment decision was what prompted her to file an appeal,¹ and that claimant appeared surprised that she was receiving separate hearings for decisions # 141438 and 155957. Order No. 21-UI-173974, Transcript at 9-10. If claimant did not receive decision # 141438, claimant's late request for hearing on that decision may have been the result of factors beyond her reasonable control. However, further inquiry is needed to determine whether claimant had good cause to file the late request for hearing, and filed the late request for hearing within a reasonable time.

On remand, the ALJ should ask questions to confirm that claimant failed to receive decision # 141438, being careful to distinguish between it and decision # 155957 and, if so, to determine whether claimant's failure to receive decision # 141438 was due to a factor beyond claimant's reasonable control or an excusable mistake. To this end, the ALJ should ask questions relating to whether claimant had experienced trouble receiving mail. The ALJ should also ask questions to determine when claimant learned of the existence of decision # 141438, whether the circumstances that prevented a timely filing (if any) ceased to exist at that point, and, if so, whether claimant's December 2, 2020 request for hearing was filed within seven-day "reasonable time" thereafter.

Further, the Department's witness testified that decision # 141438 was mailed with instructions for how to file an appeal in English but not in Spanish. Given that claimant does not speak or read English, the ALJ should ask questions on remand to determine whether, under OAR 471-040-0010(2), the Department's failure to mail the instructions in Spanish amounted to the Department failing to follow its policies with respect to providing service to a limited English proficient person, including the failure to communicate in writing in a language that could be understood by claimant.

Order No. 21-UI-173974 therefore is reversed, and the matter remanded for a hearing on whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 141438.

Overpayment. Should the merits of decision # 141438 be reached on remand, and because the merits of decision # 141438 affect whether the overpayment decision, # 155957, should be affirmed, Order No. 21-UI-173975 is also set aside and the matter remanded for a hearing.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant had good cause to file a late request for hearing on decision # 141438, and if so, the merits of that decision and decision # 155957, Orders No. 21-UI-173974 and No. 21-UI-173975 are reversed, and these matters are remanded.

¹ See Order No. 21-UI-173974, Transcript at 10 (Q: Did you receive that overpayment Decision in the mail? A: Yes. Q: That – the letter that you were referring to earlier, that prompted you to file an appeal? A: Yeah. Yeah, that – that letter.).

DECISION: Orders No. 21-UI-173974 and No. 21-UI-173975 are set aside, and these matters remanded for further proceedings consistent with this order.

DECISIÓN: *Las Órdenes Judiciales No. 21-UI-173974 y 21-UI-173975 se ponen a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*

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

DATE of Service: June 9, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 21-UI-173974 and No. 21-UI-173975 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

NOTA: *La falta de cualquier parte de presentarse a la audiencia sobre la remisión no reinstalará las Órdenes Judiciales No. 21-UI-173974 y 21-UI-173975, ni devolverán estas órdenes a la EAB. Solamente una aplicación oportuna para revisión de las órdenes subsiguientes de la(s) nueva(s) audiencia(s) volverán los casos a la EAB.*

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.

Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Puede acceder a la encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.