

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0642

Reversed
Late Application for Review Allowed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On March 15, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective July 15, 2018 (decision # 80749). On April 4, 2019, decision # 80749 became final without claimant having filed a request for hearing. On April 7, 2019, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on April 9, 2019 issued Order No. 19-UI-127870, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 23, 2019. On April 29, 2019, Order No. 19-UI-127870 became final without claimant having filed an application for review. On April 29, 2019, claimant filed a late response to the appellant questionnaire. On May 1, 2019, ALJ Kangas mailed a letter to claimant stating that because claimant's response to the appellant questionnaire was late, it would not be considered, another order would not be issued, and Order No. 19-UI-127870 remained in effect. On May 12, 2022, claimant filed a late application for review of Order No. 19-UI-127870 with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered two pieces of additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is, first, the written statement claimant provided with their late application for review, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. The second piece of additional evidence consists of claimant's response to the appellant questionnaire, and has been marked as EAB Exhibit 2, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 and EAB Exhibit 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) On March 15, 2019, the Department mailed decision # 80749 to claimant's address on file with the Department. Decision # 80749 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 April 14, 2019." Exhibit 1 at 2.

(2) Claimant did not receive decision # 80749.

(3) At the time the Department mailed decision # 80749 to claimant's address of record, claimant was "struggling with a stalker who periodically check[ed] [claimant's] mail and [took] significant mail pieces[.]" EAB Exhibit 2 at 2. Claimant believed this individual deliberately took decision # 80749 out of claimant's mailbox to interfere with claimant's ability to receive unemployment insurance benefits. EAB Exhibit 2 at 2.

(4) On April 7, 2019, claimant logged into the Department's online claim system and learned for the first time that the Department had denied her claim for benefits. EAB Exhibit 2 at 1. On April 7, 2019, after learning that the Department had denied her claim, claimant filed a request for hearing on decision # 80749. EAB Exhibit 2 at 1.

(5) On April 9, 2019, the Office of Administrative Hearings (OAH) mailed Order No. 19-UI-127870 to claimant's address on file with OAH. Order No. 19-UI-127870 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. 19-UI-127870 at 2. Order No. 19-UI-127870 also stated on its certificate of mailing that "Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than April 29, 2019."

(6) On the date that OAH mailed Order No. 19-UI-127870 to claimant and continuing until May 12, 2022, claimant was suffering from severe PTSD symptoms that prevented her from filing an application for review of Order No. 19-UI-127870. EAB Exhibit 1 at 1.

(7) On May 12, 2022, claimant PTSD symptoms abated enough that claimant was able to file an application for review of Order No. 19-UI-127870. EAB Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Claimant's late application for review is allowed. Order No. 19-UI-127870 is reversed, claimant's late request for hearing is allowed, and a hearing on the merits of decision # 80749 is required.

Late Application 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 application for review of Order No. 19-UI-127870 was due by April 29, 2019. Because claimant did not file their application for review until May 12, 2022, the application for review was late. Claimant provided a written statement with the application for review. In it, claimant explained that they were “unable to follow up on this claim until [May 12, 2022] due to severe PTSD symptoms which include seizures, re-experiencing trauma, and avoidance of people, places, and events that remind me of the trauma of being stalked and assaulted[.]” EAB Exhibit 1 at 1. The written argument states that the trauma claimant re-experienced as a result of their PTSD which prevented them from filing an application for review until May 12, 2022 included being confined to an apartment and being drugged and assaulted. EAB Exhibit 1 at 1.

Claimant’s evidence is sufficient to show that claimant failed to file a timely application for review because of their PTSD symptoms, which were circumstances beyond their reasonable control. Claimant filed their application for review on May 12, 2022, which was the same day that claimant’s PTSD symptoms abated enough for claimant to file an application for review. Claimant therefore filed their application for review within a seven-day reasonable time after the circumstances that prevented a timely filing ceased to exist. Thus, claimant established good cause to extent the filing deadline to May 12, 2022, and the late application for review is 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.

On March 15, 2019, the Department mailed decision # 80749 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 April 4, 2019. Claimant did not file a request for hearing on decision # 80749 until April 7, 2019. Accordingly, claimant’s request for hearing was late.

The order under review dismissed claimant’s appeal because it concluded that claimant failed to show good cause to extend the deadline to April 7, 2019. Order No. 19-UI-127870 at 1. The record on review does not support this conclusion.

The record on review shows that claimant did not receive decision # 80749 in the mail, possibly because claimant’s stalker had taken it out of claimant’s mailbox, and did not learn that their claim for benefits had been denied until April 7, 2019. Thus, claimant’s failure to file a request for hearing by the April 4, 2021 deadline was the result of a factor beyond their reasonable control. On April 7, 2019, when claimant logged into the Department’s online system and learned the Department had denied their claim for benefits, the factor beyond claimant’s control ceased to exist. Moreover, on the same day that that factor ceased to exist, claimant filed a request for hearing. Claimant therefore filed their request for hearing within a seven-day reasonable time after the factor that prevented a timely filing ceased to exist. Accordingly, claimant established good cause to extend the deadline to file a request for hearing on decision # 80749 to April 7, 2019. Claimant’s late request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of decision # 80749.

DECISION: Order No. 19-UI-127870 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 14, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-127870 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 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

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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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