

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0651

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On August 20, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective March 29, 2020 (decision # 95058). On September 9, 2020, decision # 95058 became final without claimant having filed a request for hearing. On October 21, 2020, the Department served notice of an administrative decision, based in part on decision # 95058, concluding that claimant received benefits to which he was not entitled and assessing an overpayment of \$4,988 in regular unemployment insurance and Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 81838). Also on October 21, 2020, the Department served notice of an administrative decision concluding that as a result of an administrative error, claimant received benefits to which he was not entitled and assessing an overpayment of \$600 in FPUC benefits that claimant was required to repay to the Department (decision # 82202). On November 10, 2020, decisions # 81838 and 82202 became final without claimant having filed requests for hearing. On January 26, 2021, claimant filed late requests for hearing on decisions # 95058, 81838, and 82202.

ALJ Kangas considered claimant's requests, and on February 3, 2021 issued Orders No. 21-UI-160258, 21-UI-160262, and 21-UI-160260, dismissing claimant's requests for hearing on decisions # 95058, 81838, and 82202 as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by February 17, 2021. On February 16, 2021, claimant filed a timely response to the appellant questionnaire. On March 17, 2021, the Office of Administrative Hearings (OAH) mailed letters stating that Orders No. 21-UI-160258, 21-UI-160262, and 21-UI-160260 were vacated and that a hearing would be scheduled to determine whether claimant had good cause to file the late requests for hearing and, if so, the merits of decisions # 95058, 81838, and 82202.

On April 28, 2022, ALJ Scott conducted a consolidated hearing on decisions # 95058, 81838, and 82202 at which the employer failed to appear. On April 29, 2022, ALJ Scott issued Orders No. 22-UI-192550, 22-UI-192553, and 22-UI-192555, dismissing claimant's requests for hearing on decisions # 95058, 81838, and 82202, respectively, as late without showings of good cause, and leaving those administrative decisions undisturbed. On May 19, 2022, Orders No. 22-UI-192550, 22-UI-192553, and 22-UI-192555 became final without claimant having filed applications for review with the Employment

Appeals Board (EAB). On June 6, 2022, claimant filed late applications for review of Orders No. 22-UI-192550, 22-UI-192553, and 22-UI-192555 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-192550, 22-UI-192553, and 22-UI-192555. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2022-EAB-0649, 2022-EAB-0650, and 2022-EAB-0651).

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 his 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.

Claimant also enclosed several documents with his statement, which contained information that was not part of the hearing record. Claimant did not show that these documents were relevant and material to EAB's determination of whether he had good cause to file the late applications for review. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision, except for the additional evidence contained in EAB Exhibit 1.

FINDING OF FACT: (1) Order No. 22-UI-192550, mailed to claimant on April 29, 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-192550 at 4. Order No. 22-UI-192550 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before May 19, 2022 to be timely."

(2) Order No. 22-UI-192553, mailed to claimant on April 29, 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-192553 at 4. Order No. 22-UI-192553 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before May 19, 2022 to be timely."

(3) Order No. 22-UI-192555, mailed to claimant on April 29, 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-192555 at 4. Order No. 22-UI-192555 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before May 19, 2022 to be timely."

CONCLUSIONS AND REASONS: Claimant's late applications for review of Orders No. 22-UI-192550, 22-UI-192553, and 22-UI-192555 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-192550, 22-UI-192553, and 22-UI-192555 were due by May 19, 2022. Because claimant did not file his applications for review until June 6, 2022, the applications for review were late. Claimant provided a written statement with the application 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 June 6, 2022 are dismissed. Orders No. 22-UI-192550, 22-UI-192553, and 22-UI-192555 remain undisturbed.

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

DATE of Service: June 16, 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 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 الإستئناف 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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