

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0842

Late Applications for Review Allowed
Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On October 13, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was disqualified from receiving unemployment insurance benefits effective April 19, 2020 (decision # 114251). On November 2, 2020, decision #114251 became final without claimant having filed a request for a hearing. On January 13, 2021, the Department served notice of an administrative decision, based in part on decision # 114251, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$11,862.00 overpayment that claimant was required to repay to the Department, a \$632.40 monetary penalty, and a 24 week penalty disqualification from future benefits. On February 2, 2021, the January 13, 2021 administrative decision became final without claimant having filed a request for a hearing. On May 25, 2021, claimant filed late requests for hearing on decision # 114251 and the January 13, 2021 administrative decision.

ALJ Kangas considered claimant's requests, and on June 17, 2021, issued Orders No. 21-UI-168895 and 21-UI-168911, dismissing claimant's requests for hearing on decision # 114251 and the January 13, 2021 administrative decision, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by July 1, 2021. On July 7, 2021, Orders No. 21-UI-168895 and 21-UI-168911 became final without claimant having responded to the appellant questionnaire or having filed applications for review with the Employment Appeals Board (EAB). On August 1, 2022, claimant filed late applications for review of Orders No. 21-UI-168895 and 21-UI-168911 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-168895 and 21-UI-168911. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0842 and 2022-EAB-0841).

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

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 email

submitted to EAB, 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.

CONCLUSIONS AND REASONS: Orders No. 21-UI-168895 and 21-UI-168911 are set aside and these matters are remanded for a hearing on whether claimant's late requests for hearing on decision # 114251 and the January 13, 2021 administrative decision should be allowed and, if so, the merits of those decisions.

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 applications for review on Orders No. 21-UI-168895 and 21-UI-168911 were due by July 7, 2021. Because claimant did not file their applications for review until August 1, 2022, the applications for review were late. Claimant provided a written statement with the applications for review. In it, claimant explained that they never received Orders No. 21-UI-168895 and 21-UI-168911 or any other letters from OAH or the Department, and that claimant only became aware of these orders when their new employer discussed a garnishment of claimant's wages. EAB Exhibit 1 at 1.

Claimant's statement is sufficient to show that claimant failed to timely file applications for review because they did not receive Orders No. 21-UI-168895 and 21-UI-168911 in the mail, which was a circumstance beyond their reasonable control. When claimant filed the late applications for review, they still had not received either Order No. 21-UI-168895 or Order No 21-UI-168911, as they filed in response to learning of a wage garnishment rather than in response to receiving the orders. Thus, the circumstances that prevented claimant from timely filing their late applications for review never ceased to exist, and claimant therefore filed the late applications for review within a reasonable time. Claimant has therefore established good cause to extend the filing deadlines, and claimant's 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. Under OAR 471-040-0010(1)(b)(A), good cause for filing a late request for hearing does not include "[f]ailure to receive a document due to not notifying the

Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal[.]”

The requests for hearing on decision # 114251 and the January 13, 2021 administrative decisions were due by November 2, 2020 and February 20, 2021, respectively. Because claimant did not file their requests for hearing on either administrative decision until May 25, 2021, the requests were late. In their statement enclosed with the late application for review, claimant indicated that they had not received any letters from the Department of OAH. EAB Exhibit 1 at 1. Consequently, claimant may have not received either administrative decision due to factors beyond their reasonable control. However, further inquiry is needed to determine whether claimant actually received decision # 114251 and the January 13, 2021 decision, if so, when, and, if they did not receive them timely or at all, what caused them not to receive them in time to file timely requests for hearing.

If the record on remand shows that claimant never received these decisions, the ALJ should ask questions to determine whether the failure to receive these decisions was the result of claimant’s failure to update their address with the Department while they were claiming benefits or had reason to know of a pending appeal. Finally, the ALJ should develop the record as to when claimant learned of the existence of decision # 114251 and the January 13, 2021 decision, and, in any case, what caused claimant to file the requests for hearing when they did.

Orders No. 21-UI-168895 and 21-UI-168911 are therefore reversed, and these matters remanded for a hearing on whether claimant’s late requests for a hearing should be allowed and, if so, the merits of decision # 114251 and the January 13, 2021 administrative decision.

DECISION: Claimant’s late applications for review are allowed. Orders No. 21-UI-168895 and 21-UI-168911 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: September 28, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 21-UI-168895 and 21-UI-168911 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these matters to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymzmo.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.



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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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.

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.