

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0982-R

Request for Reconsideration Allowed
EAB Decision 2022-EAB-0982 Reversed on Reconsideration ~ Late Application for Review Allowed
Order No. 22-UI-173374 Reversed ~ Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On May 27, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct, and claimant was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 174943). On June 16, 2021, decision # 174943 became final without the employer having filed a request for hearing. On June 17, 2021, the employer filed a late request for hearing. ALJ Kangas considered the employer's request, and on August 25, 2021 issued Order No. 21-UI-173374, dismissing the request as late, subject to the employer's right to renew the request by responding to an appellant questionnaire by September 8, 2021. On September 14, 2021, Order No. 21-UI-173374 became final without the employer having responded to the appellant questionnaire or having filed an application for review of Order No. 21-UI-173374 with the Employment Appeals Board (EAB). On September 23, 2022, the employer filed what was construed as a late application for review of Order No. 21-UI-173374 with EAB. On October 26, 2022, EAB issued EAB Decision 2022-EAB-0982, dismissing the employer's late application for review without prejudice. On November 1, 2022, the employer filed a timely request for reconsideration with EAB. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

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 the employer's reconsideration request and documents attached thereto, 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) On May 27, 2021, the Department mailed decision # 174943 to the employer's address on file with the Department. Decision # 174943 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 June 16, 2021.” Exhibit 1 at 2.

(2) On May 28, 2021, the Department mailed another copy of decision # 174943 to the employer’s address on file with the Department. EAB Exhibit 1 at 4. This copy of decision # 174943 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 June 17, 2021.” EAB Exhibit 1 at 5.

(3) On June 17, 2021, the employer’s representative submitted a request for hearing on decision # 174943 to the Department via fax.

(4) Order No. 21-UI-173374, mailed to the employer on August 25, 2021, 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. 21-UI-173374 at 2. Order No. 21-UI-173374 also stated on its Certificate of Mailing, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than September 14, 2021.”

(5) On May 10, 2022, the employer’s representative submitted a fax to either the Department or the Office of Administrative Hearings stating that a hearing had not been set and requesting an investigation into the matter. EAB Exhibit 1 at 1. On September 23, 2022, the employer’s representative submitted another similar request via fax. This request was construed as an application for review of Order No. 21-UI-173374.

CONCLUSIONS AND REASONS: The employer’s request for reconsideration is allowed. The employer had good cause to file the late application for review of Order No. 21-UI-173374. The employer filed a timely request for hearing on decision # 174934 and is entitled to a hearing on the merits of that decision.

Reconsideration. ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including “the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law.” The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2) (May 13, 2019).

EAB dismissed the employer’s late application for review without prejudice and subject to employer filing a timely request for reconsideration within 20 days after EAB’s dismissal decision was issued. The employer filed a request for reconsideration consistent with the requirements set forth in OAR 471-041-0145. The request for reconsideration is, therefore, allowed.

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. 21-UI-173374 was due by September 14, 2021. Because the employer did not file their application for review until September 23, 2022, the application for review was late. In their statement enclosed with the request for reconsideration, the employer's representative stated that the employer and their representative "...never received any dismissal decision dated 21-UI-73374 [*sic*]. This was not sent to the Address of Record and received by the agent on or about August 25, 2021." EAB Exhibit 1 at 1.

It is not clear from the record why the employer alleged that the order under review was not sent to the address of record, as the employer's representative did not identify any other address to which the order under review should have been sent instead. Nevertheless, the employer or their representative apparently did not receive a copy of the order under review. As such, the employer failed to file a timely application for review due to circumstances beyond their control. Those circumstances ceased when the employer filed the document on September 23, 2022 that was construed as an application for review of the order under review. Because the circumstances ceased on the same day that they filed the application for review, they filed it within a reasonable time, and therefore had good cause to file the late application for review.

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.

The copy of decision # 174943 in the record associated with the order under review indicated that the administrative decision was mailed on May 27, 2021 and became final on June 16, 2021. Exhibit 1 at 1. The employer filed their request for hearing the following day on June 17, 2021. Based on this, the order under review concluded that the employer filed a late request for hearing on decision # 174943 and dismissed the employer's request. Order No. 21-UI-173374 at 1–2. However, for reasons unknown, the Department mailed another copy of decision # 174943 to the employer on May 28, 2021, which required a timely request for hearing to be filed by June 17, 2021. EAB Exhibit 1 at 4–5. As the employer filed a request for hearing on June 17, 2021, the employer in fact filed a timely request for hearing on the copy of decision # 174943 that was mailed to them on May 28, 2021. As such, the employer is entitled to a hearing on the merits of that decision.

DECISION: The employer's request for reconsideration is allowed. On reconsideration, the employer's late application for review is allowed. Order No. 21-UI-173374 is set aside, as outlined above, and a merits hearing is required.

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

DATE of Service: December 30, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-173374 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 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

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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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