

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0998

Reversed & Remanded
Late Requests for Hearing ~ Reversed & Remanded

PROCEDURAL HISTORY: On December 2, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed late claims for unemployment insurance benefits for the weeks including September 5, 2021 through September 25, 2021 (weeks 36-21 through 38-21) and therefore was ineligible to receive benefits for those weeks (decision # 55952). Also on December 2, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks including October 3, 2021 through October 30, 2021 (weeks 40-21 through 43-21) and therefore was ineligible to receive benefits for those weeks (decision # 65207). On December 22, 2021, decisions # 55952 and 65207 became final without claimant having filed requests for hearing. On January 6, 2022, claimant filed late requests for hearing on decisions # 55952 and 65207. ALJ Kangas considered claimant's requests, and on April 14, 2022 issued Orders No. 22-UI-191365 and 22-UI-191371, dismissing claimant's requests for hearing on decisions # 55952 and 65207, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by April 28, 2022. On May 4, 2022, Orders No. 22-UI-191365 and 22-UI-191371 became final without claimant having filed a response to the appellant questionnaire or applications for review with the Employment Appeals Board (EAB). On September 30, 2022, claimant filed late applications for review of Orders No. 22-UI-191365 and 22-UI-191371.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-191365 and 22-UI-191371. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0999 and 2022-EAB-0998).

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 had problems with mail being stolen or not delivered, and at some point informed the U.S. Postal Service of the problems. However, the problems persisted, and at times, claimant’s mail “was being stolen almost everyday.” EAB Exhibit 1 at 1.

(2) On December 2, 2021, the Department mailed decision # 55952 to claimant’s address on file with the Department. Decision # 55952 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 December 22, 2021.” Order No. 22-UI-191365, Exhibit 1 at 2.

(3) Also on December 2, 2021, the Department mailed decision # 65207 to claimant’s address on file with the Department. Decision # 65207 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 December 22, 2021.” Order No. 22-UI-191371, Exhibit 1 at 2.

(4) On December 22, 2021, decisions # 55952 and 65207 became final without claimant having filed a request for hearing on either administrative decision. On January 6, 2022, claimant filed late requests for hearing on decisions # 55952 and 65207.

(5) On April 14, 2022, the Office of Administrative Hearings (OAH) mailed Orders No. 22-UI-191365 and 22-UI-191371 to claimant’s address on file with OAH. Each order 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-191365 at 2; Order No. 22-UI-191371 at 2. Orders No. 22-UI-191365 and 22-UI-191371 also each stated on their respective certificates of mailing that, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than May 4, 2022.”

(6) Claimant never received Orders No. 22-UI-191365 and 22-UI-191371 in the mail because of their problems with mail being stolen or not delivered. EAB Exhibit 1 at 1. On September 30, 2022, claimant filed late applications for review with EAB.

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 22-UI-191365 and 22-UI-191371 are allowed. Orders No. 22-UI-191365 and 22-UI-191371 are reversed, and the matters remanded for further development of the record.

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. 22-UI-191365 and 22-UI-191371 were due by May 4, 2022. Because claimant did not file their applications for review until September 30, 2022, the applications for

review were late. Claimant provided a written statement with the applications for review. In it, claimant explained that they did not receive Orders No. 22-UI-191365 and 22-UI-191371 in the mail because of their problems with mail being stolen or not delivered. EAB Exhibit 1 at 1.

Claimant's evidence is sufficient to show that claimant failed to file timely applications for review because they did not receive Orders No. 22-UI-191365 and 22-UI-191371 in the mail, which was a circumstance beyond their reasonable control. Claimant filed their applications for review on September 30, 2022. It is reasonable to conclude that the date claimant filed the applications for review was the same day they became aware of Orders No. 22-UI-191365 and 22-UI-191371. Therefore, September 30, 2022 was within seven days of when claimant became aware of Orders No. 22-UI-191365 and 22-UI-191371 and the circumstance beyond their control ceased to exist. Claimant therefore filed their 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 September 30, 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.

On December 2, 2021, the Department mailed decisions # 55952 and 65207 to claimant at claimant's address of record on file with the Department. The 20-day deadline for claimant to file timely requests for hearing on those decisions was December 22, 2021. Claimant did not file their requests for hearing on decisions # 55952 and 65207 until January 6, 2022. Accordingly, claimant's requests for hearing were late.

In their written statement explaining why their applications for review were late, claimant indicated that they had problems with mail being stolen or not delivered and at some point informed the U.S. Postal Service of the problems but the problems persisted. EAB Exhibit 1. At times, claimant's mail "was being stolen almost everyday." EAB Exhibit 1. If claimant did not receive decisions # 55952 and 65207 because of their mail being stolen or not delivered, claimant's late requests for hearing may have been the result of factors beyond their reasonable control. However, further inquiry is needed to determine whether claimant had good cause to file the late requests for hearing, and, if so, whether they filed the late requests for hearing within a reasonable time. On remand, the ALJ should ask questions to confirm that claimant failed to receive the administrative decisions and, if so, to determine whether claimant's failure to receive the administrative decisions was due to a factor beyond claimant's reasonable control or an excusable mistake. The ALJ should also ask questions to determine when claimant learned of the existence of decisions # 55952 and 65207, whether the circumstances that prevented a timely filing (if any) ceased to exist at that point, and, if so, whether claimant's January 6, 2022 requests for hearing were filed within a reasonable time thereafter.

Orders No. 22-UI-191365 and 22-UI-191371 therefore are reversed, and these matters remanded for a hearing on whether claimant's late requests for hearing should be allowed and, if so, the merits of decisions # 55952 and 65207.

DECISION: Order No. 22-UI-191365 and 22-UI-191371 are set aside, and these matters are remanded for further proceedings consistent with this order.

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

DATE of Service: November 23, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-191365 or 22-UI-191371 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these matters 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

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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