

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1005

Late Applications for Review Dismissed Without Prejudice

PROCEDURAL HISTORY AND FINDINGS OF FACT: On June 30, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work, available for work, or actively seeking work during the weeks including June 13, 2021 through June 26, 2021 (weeks 24-21 and 25-21) and therefore was ineligible to receive unemployment insurance benefits for those weeks and until the reason for the denial ended (decision # 94646). On July 20, 2021, decision # 94646 became final without claimant having filed a request for hearing. On February 17, 2022, the Department served notice of an administrative decision, based in part on decision # 94646, concluding that claimant had received benefits to which they were not entitled and assessing an overpayment of \$1,022 in regular unemployment insurance (regular UI) benefits and \$600 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 105321). On March 9, 2022, decision # 105321 became final without claimant having filed a request for hearing. On May 1, 2022, claimant filed late requests for hearing on decisions # 94646 and 105321.

ALJ Kangas considered claimant's requests, and on August 25, 2022 issued Orders No. 22-UI-201380 and 22-UI-201373, dismissing claimant's requests for hearing on decisions # 94646 and 105321, respectively, as late without a showing of good cause, subject to claimant's right to renew the requests by responding to appellant questionnaires by September 8, 2022. On September 14, 2022, Orders No. 22-UI-201380 and 22-UI-201373 became final without claimant having responded to the appellant questionnaires or filing applications for review with the Employment Appeals Board (EAB). On October 3, 2022, claimant filed late responses to the appellant questionnaires and late applications for review of Orders No. 22-UI-201380 and 22-UI-201373 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-201380 and 22-UI-201373. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-1006 and 2022-EAB-1005).

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 responses to the appellant questionnaires, and has been marked as EAB Exhibit 1, and a copy provided to the

parties with these decisions. 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: The applications for review are dismissed without prejudice.

On October 3, 2022, the appellant filed applications for review of Orders No. 22-UI-201380 and 22-UI-201373 with EAB. ORS 657.270(6) and ORS 657.270(7)(b) required the applications for review to be filed no later than September 14, 2022. The appellant's applications for review are therefore late, and these applications for review are dismissed.

The deadline for filing an application for review may be extended a reasonable time upon a showing of good cause. *See* ORS 657.875; OAR 471-041-0070 (May 13, 2019). If the appellant believes they have good cause and filed their late application for review within a reasonable time, the appellant may request that EAB reconsider this decision under OAR 471-041-0145 (May 13, 2019).

EAB will dismiss any request for reconsideration that does not include **all five** of the following:

1. The appellant must file the request for reconsideration within 20 days of the date this decision was mailed; the date this decision was mailed is December 9, 2022, making the deadline December 29, 2022¹ to file the request for reconsideration, **and**
2. The appellant must include a statement on the request for reconsideration declaring that they sent a copy of the request to the other party, **and**
3. The appellant must provide additional specific details about the reason they filed a late application for review. For example, the appellant should include specific information about the date they received the ALJ's order, whether they read it, whether they agreed or disagreed with the ALJ's order, the reason(s) why they did not file the application for review before the deadline, how the reason(s) affected their ability to file a timely application for review, when they were away from home and for what reason, when they returned, and any other specific details that might help EAB determine whether or not the appellant had "good cause," which means factors or circumstances beyond their reasonable control prevented them from filing a timely application for review, **and**
4. The appellant must provide the date the circumstances that prevented them from filing a timely application for review (which they listed in response to #3, above) ceased to exist, **and**
5. The appellant must provide sufficient information to prove that they filed their application for review within seven days of that date.

The appellant may file a request for reconsideration in many ways; please note that you need only file *one* request for reconsideration:

¹ Parties only get 20 days to respond regardless of holidays or if the deadline falls on a weekend.

1. Use your smart phone, tablet, or computer to fill out the “File a Written Argument” form, available on EAB’s website: <https://www.oregon.gov/EMPLOY/EAB/Pages/default.aspx>, *or*
2. Use your smart phone, tablet, or computer to send an email to EAB at OED_EAB_OFFICE@employ.oregon.gov, *or*
3. Send the request by U.S. mail or another delivery service, addressed to 875 Union St NE, Salem, Oregon 97311, *or*
4. Send EAB a fax at 503-378-2129.

DECISION: The applications for review filed October 3, 2022 are dismissed without prejudice. Orders No. 22-UI-201380 and 22-UI-201373 remain undisturbed.

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

DATE of Service: December 9, 2022

NOTE: The Department may defer recovery or completely waive the overpaid amount if certain standards are met. To make a request for Waiver of Overpayment Recovery, call 503-947-1995 or email OED_Overpayment_unit@employ.oregon.gov . You must submit waiver applications that correspond to the program for which you were overpaid benefits. **If you were overpaid benefits under both state and federal benefits programs, you will need to file two separate waiver applications.** To access a State UI Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “State UI Overpayment Waiver”. To access a Federal Program Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “Federal Program Overpayment Waiver”.

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
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www.Oregon.gov/Employ/eab

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