

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1007

Late Application for Review Allowed
Order No. 22-UI-199684 Reversed & Remanded

PROCEDURAL HISTORY: On February 1, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was overpaid \$3,060 in regular unemployment insurance (regular UI) benefits that the must repay the Department (decision # 101536). On February 21, 2018, decision # 101536 became final without claimant having filed a request for hearing. On April 21, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on August 3, 2022 issued Order No. 22-UI-199684, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 17, 2022. On August 23, 2022, Order No. 22-UI-199684 became final without claimant having filed a response to the appellant questionnaire or an application for review of Order No. 22-UI-199684. On October 3, 2022, claimant filed a late application for review of Order No. 22-UI-199684 with the Employment Appeals Board (EAB).

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 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 will remain in the record.

FINDINGS OF FACT: (1) On February 1, 2018, the Department mailed decision # 101536 to claimant's address on file with the Department. Decision # 101536 stated that claimant had the right to appeal the decision if claimant disagreed with it and that any appeal from the decision must be filed by February 21, 2018 to be timely. Exhibit 1 at 2. On February 21, 2018, decision # 101536 became final without claimant having filed a request for hearing.

(2) On April 12, 2022, the Department served notice of decision # 83507, an administrative decision that denied claimant's request for waiver of the regular UI overpayment established by decision # 101536.

On April 21, 2022, claimant filed a timely request for hearing on decision # 831507, which was given case reference number 2022-UI-64454.¹

(3) Also on April 21, 2022, claimant filed a late request for hearing on decision # 101536. The same day, claimant updated their address of record from their parents' address in Medford, Oregon to their current address in Central Point, Oregon. EAB Exhibit 1 at 2.

(4) On August 3, 2022, the Office of Administrative Hearings (OAH) mailed Order No. 22-UI-199684 to the address of claimant's parents in Medford. Order No. 22-UI-199684 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-199684 at 2. Order No. 22-UI-199684 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 August 23, 2022."

(5) Claimant did not receive Order No. 22-UI-199684 because it was mailed to their parents' address in Medford. On August 23, 2022, the deadline passed to timely file an application for review of Order No. 22-UI-199684. On September 26, 2022, learned of the existence of Order No. 22-UI-199684. On October 3, 2022 claimant filed a late application for review of Order No. 22-UI-199684.

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 22-UI-199684 is allowed. Order No. 22-UI-199684 is reversed, and this matter remanded for further development of the record.

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. 22-UI-199684 was due by August 23, 2022. Because claimant did not file their application for review until October 3, 2022, the application for review was late.

Claimant provided a written statement with their application for review. In it, claimant explained that they did not receive Order No. 22-UI-199684 because OAH mailed it to the address of claimant's parents in Medford. EAB Exhibit 1 at 1. The record on review shows that prior to OAH's issuance of Order No. 22-UI-199684, claimant had updated their address of record to their address in Central Point, Oregon. EAB Exhibit 1 at 2. The fact that OAH mailed Order No. 22-UI-199684 to the wrong address despite having the correct address was a circumstance beyond claimant's reasonable control that

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

prevented them from filing a timely application for review. The record further supports the inference that on September 26, 2022, claimant had Order No. 22-UI-199684 “in hand,” or in their possession, and therefore learned of the existence of the order at that time. EAB Exhibit 1 at 1. Thus, the circumstance that prevented a timely filing ceased on September 26, 2022. Claimant filed their application for review on October 3, 2022, which was within a seven-day “reasonable time” of when the circumstance that prevented a timely filing ceased to exist. Claimant therefore established good cause to extend the filing deadline to October 3, 2022, and the late application for review is 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. Good cause 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 claimant benefits or if the person knows, or reasonably should know, of a pending appeal.” OAR 471-040-0010(1)(b)(A).

On February 1, 2018, the Department mailed decision # 101536 to claimant at claimant’s address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on that decision was February 21, 2018. Claimant did not file their request for hearing on decision # 101536 until April 21, 2022. Accordingly, claimant’s request for hearing was late.

Because claimant learned of the existence of Order No. 22-UI-199684 after the deadline to file a timely appellant questionnaire response, the record on review lacks information about why claimant filed their request for hearing for decision # 101536 late. Therefore, further inquiry is needed to determine whether claimant had good cause to file the late request for hearing on decision # 101536, and if so, whether they filed the late request for hearing within a reasonable time. On remand, the ALJ should ask questions to determine whether claimant lacked notice of the existence of decision # 101536 and, if so, to determine whether that was due to a factor beyond claimant’s reasonable control or an excusable mistake. The ALJ also should ask questions to determine when claimant learned of the existence of decision # 101536, whether the circumstances that prevented a timely filing (if any) ceased at that point, and whether claimant’s April 21, 2022 request for hearing was filed within a reasonable time. If the record on remand shows claimant failed to receive decision # 101536, the ALJ should ask questions relating to whether claimant failed to receive the decision due to not notifying the Department or OAH of an updated address while claimant was claiming benefits or knew, or reasonably should have known, of a pending appeal.

Order No. 22-UI-199684 is therefore reversed, and this matter remanded for a hearing on whether claimant’s late request for hearing should be allowed and, if so, the merits of decision # 101536.

On remand, OAH should consolidate this case with claimant’s appeal of decision # 83507, case reference number 2022-UI-64454.

DECISION: Order No. 22-UI-199684 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: December 6, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-199684 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

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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