

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1098

Reversed
Late Application for Review Allowed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On April 18, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received benefits to which they were not entitled, and assessing an overpayment of \$3,264 in regular unemployment insurance (regular UI) benefits and \$3,600 in Federal Pandemic Unemployment Compensation Benefits (FPUC), that claimant was required to repay to the Department (decision # 90911). On May 9, 2022, decision # 90911 became final without claimant having filed a request for hearing. On May 10, 2022, claimant filed a late request for a hearing. ALJ Kangas considered the request, and on August 19, 2022 issued Order No. 22-UI-200929, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 2, 2022. On September 8, 2022, Order No. 22-UI-200929 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On September 19, 2022, claimant filed a late application for review with 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 claimant's response to the appellant questionnaire, 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 April 18, 2022, the Department mailed decision # 90911 to claimant's address on file with the Department. Decision # 90911 stated, "If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before May 9, 2022 to be timely." Exhibit 1 at 3.

(2) Claimant had stage four cancer and as a result was unable to retrieve their own mail. Claimant received their mail twice a month, whenever they had someone to assist them. Additionally, claimant experienced “brain fog” as a symptom of their cancer. EAB Exhibit 1 at 1.

(3) On May 9, 2022, decision # 90911 became final without claimant having filed a request for hearing.

(4) On May 10, 2022, claimant, with the assistance of a representative, filed a hearing request using the Department’s online system. Claimant required assistance filing online because due to their cancer symptoms, it was too difficult for claimant to file online without assistance.

(5) On August 18, 2022, the Office of Administrative Hearings (OAH) mailed Order No. 22-UI-200929 to claimant’s address on file with OAH. Order No. 22-UI-200929 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-200929 at 2. Order No. 22-UI-200929 also stated on its certificate of mailing that, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than September 8, 2022.”

(6) Claimant’s cancer symptoms continued to affect their ability to retrieve their mail, causing delays in their receipt of and response to Order No. 22-UI-200929.

(7) Claimant submitted a late application for review on September 19, 2022.

CONCLUSIONS AND REASONS: Claimant’s late application for review is allowed. Order No. 22-UI-200929 is reversed, claimant’s late request for hearing is allowed, and a hearing on the merits of decision # 90911 is required.

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-200929 was due by September 8, 2022. Because claimant did not file their application for review until September 19, 2022, the application for review was late. However, the record on review shows that claimant required other people to bring them their mail, and that this was only able to occur twice a month. EAB Exhibit 1 at 1. Claimant’s advanced cancer necessitated this arrangement, caused claimant to suffer from brain fog, and limited them to such a degree that they had been unable to file an appeal of decision # 90911 without the assistance of another. This evidence is sufficient to conclude that claimant’s application for review of Order No. 22-UI-200929 was late because of a factor beyond their control. Further, the September 19, 2022 filing date was within a seven-day reasonable time after those circumstances abated to a sufficient degree that filing an application for review was possible. Thus, claimant established good cause to extend the filing

deadline a reasonable time to September 19, 2022, and the late application for review is therefore 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 April 18, 2022, the Department mailed decision # 90911 to claimant’s address. The deadline for filing a request for hearing on this decision was May 9, 2022. Claimant did not file their request for a hearing until May 10, 2022. Therefore, claimant’s request for hearing was late.

The record on review shows that claimant did not timely receive decision # 90911 because their medical condition limited their ability to retrieve their mail. Claimant received assistance in retrieving their mail, but this only occurred twice per month. The record further shows that once claimant received decision # 90911, they were unable to file a hearing request without the assistance of a representative because of their cancer symptoms. As a result, claimant was not able to file a hearing request until May 10, 2022, one day late. This evidence is sufficient to show that claimant’s late request for hearing was a result of circumstances caused by their late stage cancer, which is a factor beyond their reasonable control. These circumstances persisted throughout the filing period but it is reasonable to conclude they temporarily abated on May 10, 2022 such that it was possible for claimant’s representative to request an appeal on claimant’s behalf that day. Claimant therefore filed their request for hearing with a seven-day reasonable time. Claimant established good cause to extend the deadline to file a request for hearing on decision # 90911 a reasonable time to May 10, 2022. Claimant’s late request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of decision # 90911.

DECISION: Order No. 22-UI-200929 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: November 22, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-200929 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 الاستئناف 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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