

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1193

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On February 18, 2022, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible to receive PUA benefits effective March 8, 2020. On February 25, 2022, the Department served notice of an administrative decision, based in part on the February 18, 2022 administrative decision, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$15,170.00 overpayment of PUA benefits, a \$19,800.00 overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits, a \$1,800.00 overpayment of Lost Wages Assistance (LWA) benefits,¹ and a \$5,245.50 monetary penalty. On March 10, 2022, the February 18, 2022 administrative decision became final without claimant having filed a request for hearing. On March 17, 2022, the February 25, 2022 administrative decision became final without claimant having filed a request for hearing. On April 27, 2022, Claimant filed late requests for hearing on the February 18, 2022 and February 25, 2022 administrative decisions. ALJ Kangas considered claimant's requests, and on August 4, 2022 issued Order No. 22-UI-199830 and Order 22-UI-199828, respectively dismissing claimant's requests for hearing on the February 18, 2022 and February 25, 2022 administrative decisions as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by August 18, 2022.

On August 24, 2022, Orders No. 22-UI-199830 and 22-UI-199828 became final without having filed responses to the appellant questionnaire or applications for review of Orders No. 22-UI-199830 and 22-UI-199828 with the Employment Appeals Board (EAB). On September 29, 2022, claimant filed late responses to the appellant questionnaire and late applications for review of Orders No. 22-UI-199830 and 22-UI-199828 with EAB. On October 18, 2022, ALJ Kangas mailed letters to claimant stating that because claimant's responses to the appellant questionnaire were late, they would not be considered, additional orders would not be issued, and Orders No. 22-UI-199830 and 22-UI-199828 remained in effect. These matters come before EAB based upon claimant's September 29, 2022 applications for review of Orders No. 22-UI-199830 and 22-UI-199828.

¹ Although the February 25, 2022 administrative decision references Pandemic Emergency Unemployment Compensation (PEUC), this is presumed to be a clerical error and intended to be a reference to LWA benefits, which the decision otherwise refers to in its schedule of adjustments. See Order No. 22-UI-199828 Exhibit 1 at 2, 4-6.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-199830 and 22-UI-199828. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-1194 and 2022-EAB-1193).

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 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) Order No. 22-UI-199830, mailed to claimant on August 4, 2022, 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-199830 at 2. Order No. 22-UI-199830 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 24, 2022.”

(2) Order No. 22-UI-199828, mailed to claimant on August 4, 2022, 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-199828 at 2. Order No. 22-UI-199828 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 24, 2022.”

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 22-UI-199830 and 22-UI-199828 are dismissed.

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-199830 and 22-UI-199828 were due by August 24, 2022. Because claimant did not file their applications for review until September 29, 2022, the applications for review were late. Claimant provided a written statement with their applications for review. However, claimant’s written statement did not describe the circumstances that prevented them from filing the applications for review on time. Accordingly, claimant did not show good cause for the late applications for review, and claimant’s late applications for review of Orders No. 22-UI-199830 and 22-UI-199828 are dismissed.

DECISION: The applications for review filed September 29, 2022 are dismissed. Orders No. 22-UI-199830 and 22-UI-199828 remain undisturbed.

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

DATE of Service: December 16, 2022

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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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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