

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1198

Late Application for Review Dismissed
La Aplicación Tardía Para Revisión De La Orden Judicial Es Rechazada

PROCEDURAL HISTORY: On April 15, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective January 3, 2021 (decision # 134316). On May 5, 2021, decision # 134316 became final without claimant having filed a request for hearing. On July 7, 2021, claimant filed a late request for hearing. ALJ Kangas considered the request, and on July 29, 2021 issued Order No. 21-UI-171390, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 12, 2021. On August 9, 2021, claimant filed a response to the appellant questionnaire. On October 19, 2021, OAH mailed a letter stating that Order No. 21-UI-171390 was cancelled and vacated, and that a hearing would be scheduled to address the timeliness of claimant's hearing request and, if appropriate, the merits of decision # 134316. On June 13, 2022, ALJ L. Lee conducted the hearing, and on June 15, 2022 issued Order No. 22-UI-196208, dismissing claimant's request for hearing as late without good cause. On July 5, 2022, Order No. 22-UI-196208 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On November 29, 2022, claimant filed a late application for review of Order No. 22-UI-196208 with EAB.

HISTORIA PROCESAL: *El 15 de abril de 2021, el Departamento de Empleo de Oregón (el Departamento) envió notificación de una decisión administrativa concluyendo que la reclamante dejó el trabajo sin una buena causa y fue descalificada de recibir beneficios de desempleo a partir del 3 de enero de 2021 (decisión # 134316). Decisión # 134316 se convirtió en final el 5 de mayo de 2021 sin que la reclamante hubiera presentado una aplicación para una audiencia. El 7 de julio de 2021, la reclamante presentó una aplicación tardía para una audiencia. La Jueza Administrativa Kangas revisó la aplicación tardía de la reclamante, y el 29 de julio de 2021, emitió la Orden No. 21-UI-171390 rechazando la aplicación de la reclamante porque la aplicación era tarde. La orden también dio a la reclamante la oportunidad de responder a un cuestionario antes del 12 de agosto de 2021 sobre por qué la reclamante presentó su aplicación tarde. El 9 de agosto de 2021, la reclamante presentó una respuesta al cuestionario. El 19 de octubre de 2021, la Oficina de Audiencias Administrativas (OAH) envió una carta diciendo que la Orden No. 21-UI-171390 fue cancelada y que habría una audiencia*

para determinar si la reclamante tuvo buena causa para la aplicación tardía y si hubiera buena causa, determinar los méritos de la decisión # 134316.

El 13 de junio de 2022, la jueza administrativa L. Lee llevó a cabo una audiencia, y el 15 de junio de 2022, emitió la Orden Judicial No. 22-UI-196208, rechazando la aplicación tardía de la reclamante porque fue tarde sin buena causa. La Orden Judicial No. 22-UI-196208 se convirtió en final el 5 de julio de 2022 sin que la reclamante hubiera presentado una aplicación para revisión de La Orden Judicial No. 22-UI-196208 a la Junta de Apelaciones de Empleo (EAB). El 29 de noviembre de 2022, la reclamante archivó una aplicación tardía para revisión de La Orden Judicial No. 22-UI-196208 con 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 submitted with her 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(s) will remain in the record.

FINDING OF FACT: (1) Order No. 22-UI-196208, mailed to claimant on June 15, 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-196208 at 4. Order No. 22-UI-196208 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before July 5, 2022 to be timely.”

(2) The Department has an online messaging tool that allows claimants to contact the Department with questions. The Department’s representative explained this tool to the claimant at the June 13, 2022 hearing. Audio Record at 53:24 to 53:33.

(3) English is not claimant’s first language. She occasionally requires assistance understanding English, and translating English into Spanish.

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 22-UI-196208 is dismissed. *La aplicación tardía de la reclamante para revisión de La Orden Judicial No. 22-UI-196208 es rechazada.*

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-196208 was due July 5, 2022. Because claimant did not file their application for review until November 29, 2022, the application for review was late.

Claimant provided a written statement with the application for review. In it, claimant states that her application for review is late because “[m]any agencies and organizations are still difficult to reach in person or by phone due to the COVID-19 pandemic” and “English is not my first language, and the Administrative Rules and Oregon Revised Statutes are written in English.” EAB Exhibit. However, neither of these explanations are sufficient to establish good cause.

At hearing, the employment department’s representative informed claimant of an online tool that would allow her to send questions to the Department. Audio Record at 53:24 to 53:33. In addition, though claimant desired to receive advice on how to respond to Order No. 22-UI-196208, her written statement fails to show this was necessary for claimant to file a timely appeal or that this would have delayed claimant’s filing for over four months. Similarly, at hearing, ALJ L. Lee explained to claimant that she would receive the order in English and may need assistance translating and understanding it. Audio Record 1:07:12 to 1:07:53. ALJ L. Lee further explained claimant’s right to appeal and that she would need to file an appeal with the appeal deadline. Audio Recording at 1:07:54 to 1:08:12. Claimant responded that she understood this. Audio Record 1:08:12 to 1:08:18. Given this prompting by the ALJ regarding both the need to get assistance understanding the order and the importance of filing a timely appeal, claimant has not shown that her limited understanding of English was good cause for her delay. Accordingly, claimant did not show good cause for the late application for review, and claimant’s late application for review is dismissed.

DECISION: The application for review filed November 29, 2022 is dismissed. Order No. 22-UI-196208 remains undisturbed. *La solicitud de revisión presentada en 29 de noviembre de 2022 es rechazada. La Orden Judicial 22-UI-196208 permanece intacta.*

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

DATE of Service:

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.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.

NOTA: *Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de*

notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Puede acceder a la encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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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