

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1211

Order No. 21-UI-178860 – Late Application for Review Dismissed
Order No. 22-UI-197024 Affirmed – Late Request for Hearing Dismissed

PROCEDURAL HISTORY AND FINDINGS OF FACT: On September 24, 2021, 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 1, 2020. On October 14, 2021, the September 24, 2021 administrative decision became final without claimant having filed a request for hearing. On October 28, 2021, claimant filed a request for hearing on the September 24, 2021 administrative decision. ALJ Kangas considered claimant's request, and on November 3, 2021 issued Order No. 21-UI-178860, dismissing claimant's request for hearing on the September 24, 2021 administrative decision as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 17, 2021. On November 23, 2021, Order No. 21-UI-178860 became final without claimant having filed a response to the appellant questionnaire or an application for review of Order No. 21-UI-178860 with the Employment Appeals Board (EAB).

On February 22, 2022, the Department served notice of an administrative decision denying claimant's request for a waiver of an \$11,480.00 overpayment of PUA benefits that the Department had previously assessed on September 24, 2021 (decision # 152408). On March 14, 2022, decision # 152408 became final without claimant having filed a request for hearing. On March 25, 2022, claimant filed a request for hearing on decision # 152408. ALJ Kangas considered claimant's request, and on June 28, 2022 issued Order No. 22-UI-197024, dismissing claimant's request for hearing on decision # 152408 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 12, 2022. On July 15, 2022, claimant filed a late appellant questionnaire response, a late application for review of Order No. 21-UI-178860, and a timely application for review of Order No. 22-UI-197024 with EAB.

On November 30, 2022, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue additional orders in either matter because the questionnaire response was late. These matters come before EAB based upon claimant's late application for review of Order No. 21-UI-178860 and timely application for review of Order No. 22-UI-197024.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-178860 and 22-UI-197024. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-1210 and 2022-EAB-1211).

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, which also was their written statement filed with their application for review of Order No. 21-UI-178860, 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.

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 21-UI-178860 is dismissed. Claimant’s late request for hearing on decision # 152408 is dismissed.

Order No. 21-UI-178860 – 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. 21-UI-178860 was due by November 23, 2021. Because claimant did not file their application for review of Order No. 21-UI-178860 until July 15, 2022, the application for review was late. Claimant provided a written statement with the application for review. *See* EAB Exhibit 1. However, claimant’s written statement did not describe the circumstances that prevented claimant from filing the application for review of Order No. 21-UI-178860 on time. Accordingly, claimant did not show good cause for the late application for review, and claimant’s late application for review of Order No. 21-UI-178860 is dismissed.

Order No. 22-UI-197024 – Late Request for Hearing on Decision # 152408. 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 February 22, 2022, the Department mailed decision # 152408 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 March 14, 2022. Claimant did not file a request for hearing on decision # 152408 until March 25, 2022. Accordingly, claimant’s request for hearing on decision # 152408 was late.

In claimant’s appellant questionnaire response, claimant indicated that they received an administrative decision on September 21st of an unspecified year, and that they filed their hearing request on May 8, 2021. EAB Exhibit 1 at 1. Based on Department records, this information was likely intended to relate to a different administrative decision for which claimant made a late request for hearing.¹ Claimant’s appellant questionnaire response further states that claimant was “in communication with the OED help center about an appeal and hearing request from 5/14/21 through 3/26/22” and refers the reader to an appended list of dates listing when claimant emailed the Department. EAB Exhibit 1 at 2. However, the appended list shows no email contact with the Department between February 18, 2022 and March 22, 2022. EAB Exhibit 1 at 4. There is an entry for a contact for March 25, 2022 with the words “Requested hearing” next to the entry. EAB Exhibit 1 at 4.

Claimant did not show that factors beyond their reasonable control or an excusable mistake prevented a timely appeal of decision # 152408. It is likely that the information in the appellant questionnaire response is not intended to relate to decision # 152408. To any extent that it is intended to relate to decision # 152408, nothing that claimant asserted in their appellant questionnaire response supports good cause to extend the 20-day deadline to appeal the administrative decision. For example, it could not be contended that claimant attempted to timely appeal decision # 152408 via their email contacts with the Department but those efforts went unrecognized by the Department. This is because the administrative decision’s date of mailing and the deadline to appeal it (February 22, 2022 and March 14, 2022, respectively) fell between the dates claimant asserted they had email contact with the Department (February 18, 2022 and March 22, 2022). Furthermore, the placement of the words “Requested hearing” next to the entry for March 25, 2022, suggests that claimant believed they had requested a hearing on decision # 152408 on that date, not via an email contact at some earlier point in time.

Accordingly, claimant’s request for hearing on decision # 152408 was late and claimant did not show good cause to extend the deadline a reasonable time. Claimant’s late request for hearing on decision # 152408 is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 22-UI-197024 is affirmed. Claimant’s late application for review of Order No. 21-UI-178860 is dismissed, and Order No. 21-UI-178860 remains undisturbed.

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

DATE of Service: December 19, 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,

¹ Claimant submitted their appellant questionnaire response with an application for review that was labeled as pertaining to Order No. 22-UI-197335. Order No. 22-UI-197335 dismissed a late request for hearing on an administrative decision denying claimant’s request of a waiver of an overpayment of Lost Wages Assistance (LWA) benefits. EAB has taken notice of this fact, which is 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.

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.



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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