

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1238

Late Applications for Review Allowed
Affirmed – Late Claims for Benefits Denied
Ineligible Weeks 02-21 through 23-21; 28-21 through 30-21

PROCEDURAL HISTORY: On October 27, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed late claims for unemployment insurance benefits for the weeks from January 10 through March 6, 2021 (weeks 02-21 through 09-21) and was ineligible for benefits for those weeks (decision # 121911). Also on October 27, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks from March 7 through May 1, 2021 (weeks 10-21 through 17-21) and was ineligible for benefits for those weeks (decision # 122153). Also on October 27, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks from May 2 through June 12, 2021 (weeks 18-21 through 23-21) and was ineligible for benefits for those weeks (decision # 122436). Also on October 27, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks from July 11 through 31, 2021 (weeks 28-21 through 30-21) and was ineligible for benefits for those weeks (decision # 123218). Claimant filed timely requests for hearings on decisions # 121911, 122153, 122436, and 123218. On November 16, 2022, ALJ Monroe conducted a hearing, and on November 23, 2022 issued Orders No. 22-UI-208184, 22-UI-208183, 22-UI-208179, and 22-UI-208180, affirming decisions # 121911, 122153, 122436, and 123218. On December 13, 2022, Orders No. 22-UI-208184, 22-UI-208183, 22-UI-208179, and 22-UI-208180 became final without claimant having filed applications for review with the Employment Appeals Board (EAB). On December 14, 2022, claimant filed late applications for review of Orders No. 22-UI-208184, 22-UI-208183, 22-UI-208179, and 22-UI-208180 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-208184, 22-UI-208183, 22-UI-208179, and 22-UI-208180. For case-tracking purposes, this decision is being issued in quadruplicate (EAB Decisions 2022-EAB-1236, 2022-EAB-1235, 2022-EAB-1238, and 2022-EAB-1237).

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 written statement

explaining why his applications for review were not timely filed, 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-208184, mailed to claimant on November 23, 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-208184 at 3. Order No. 22-UI-208184 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before December 13, 2022 to be timely.”

(2) Order No. 22-UI-208183, mailed to claimant on November 23, 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-208183 at 3. Order No. 22-UI-208183 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before December 13, 2022 to be timely.”

(3) Order No. 22-UI-208179, mailed to claimant on November 23, 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-208179 at 3. Order No. 22-UI-208179 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before December 13, 2022 to be timely.”

(4) Order No. 22-UI-208180, mailed to claimant on November 23, 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-208180 at 3. Order No. 22-UI-208180 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before December 13, 2022 to be timely.”

(5) On December 13, 2022, claimant attempted to file his applications for review of Orders No. 22-UI-208184, 22-UI-208183, 22-UI-208179, and 22-UI-208180 with EAB by fax, but was unsuccessful.

(6) On December 14, 2022, claimant successfully filed his applications for review of Orders No. 22-UI-208184, 22-UI-208183, 22-UI-208179, and 22-UI-208180 with EAB by fax.

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 22-UI-208184, 22-UI-208183, 22-UI-208179, and 22-UI-208180 are allowed. Claimant filed late claims for benefits for the weeks from January 10 through June 12, 2021 (weeks 02-21 through 23-21), and July 11 through 31, 2021 (weeks 28-21 through 30-21), and is ineligible for benefits for those weeks.

Late Applications 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 applications for review of Orders No. 22-UI-208184, 22-UI-208183, 22-UI-208179, and 22-UI-208180 were due by December 13, 2022. Because claimant did not file the applications for review until December 14, 2022, the applications for review were late.

Claimant provided a written statement with the late applications for review, asserting that he had attempted to fax the applications for review on December 13, 2022, but was unsure if they were received by EAB, and therefore faxed them again the following day. EAB Exhibit 1 at 1. Because claimant faxed the applications for review on December 13, 2022, but for unknown reasons they were not received by EAB, claimant was prevented from timely filing due to a factor beyond his reasonable control. Because claimant successfully filed the next day, December 14, 2022, claimant filed the applications for review within a 7-day “reasonable time.” Therefore, claimant has shown good cause for extending the deadline to timely file the applications for review to December 14, 2022, and the late applications for review of Orders No. 22-UI-208184, 22-UI-208183, 22-UI-208179, and 22-UI-208180 are allowed. EAB therefore considered the merits of Orders No. 22-UI-208184, 22-UI-208183, 22-UI-208179, and 22-UI-208180.

Late Claims for Benefits. EAB reviewed the entire consolidated hearing record. On *de novo* review and pursuant to ORS 657.275(2), the orders under review are **adopted**.

DECISION: Orders No. 22-UI-208184, 22-UI-208183, 22-UI-208179, and 22-UI-208180 are affirmed.

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

DATE of Service: February 13, 2023

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

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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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

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