

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0116-R

Requests for Reconsideration Allowed

*EAB Decisions 2023-EAB-0114, 2023-EAB-0115, and 2023-EAB-0116 Reversed on Reconsideration ~
Late Applications for Review Allowed*

*Orders No. 22-UI-200161, 22-UI-200160, and 22-UI-200159 Reversed ~
Late Requests for Hearing Allowed
Merits Hearings Required*

PROCEDURAL HISTORY: On March 25, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective May 31, 2020 (decision # 110510). Also on March 25, 2022, the Department served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective June 20, 2021 (decision # 111259). On March 30, 2022, the Department served notice of an administrative decision, based in part on decisions # 110510 and 111259, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$18,994 in combined state and federal benefits that claimant was required to repay to the Department, a \$2,579.10 monetary penalty, and a 52-week penalty disqualification from future benefits. On April 14, 2022, decisions # 110510 and 111259 became final without claimant having filed requests for hearing. On April 19, 2022, the March 30, 2022 administrative decision became final without claimant having filed a request for hearing. On May 3, 2022, claimant filed late requests for hearing on decisions # 110510 and 111259 and the March 30, 2022 administrative decisions.

ALJ Kangas considered claimant's requests, and on August 9, 2022 issued Orders No. 22-UI-200161, 22-UI-200160, and 22-UI-200159, dismissing claimant's requests for hearing on decisions # 110510 and 111259 and the March 30, 2022 administrative decisions as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by August 23, 2022. On August 29, 2022, Orders

No. 22-UI-200161, 22-UI-200160, and 22-UI-200159 became final without claimant having filed a response to the appellant questionnaires or applications for review with the Employment Appeals Board (EAB). On September 21, 2022, claimant filed late applications for review of Orders No. 22-UI-200161, 22-UI-200160, and 22-UI-200159 with EAB. On January 14, 2023, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding these matters because the questionnaire response was late.

EAB consolidated its review of Orders No. 22-UI-200161, 22-UI-200160, and 22-UI-200159 pursuant to OAR 471-041-0095 (October 29, 2006), and on February 1, 2023 issued in triplicate EAB Decisions 2023-EAB-0114, 2023-EAB-0115, and 2023-EAB-0116, dismissing claimant's late applications for review without prejudice. On February 9, 2023, claimant filed requests for reconsideration of EAB Decisions 2023-EAB-0114, 2023-EAB-0115, and 2023-EAB-0116. This decision is issued pursuant to EAB's authority under ORS 657.290(3). EAB's review remains consolidated pursuant to OAR 471-041-0095, and for case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2023-EAB-0114-R, 2023-EAB-0115-R, and 2023-EAB-0116-R).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's statement included with their requests for reconsideration, has been marked as EAB Exhibit 2, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 2 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 March 25, 2022, the Department mailed decision # 110510 to claimant's address on file with the Department. Decision # 110510 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than April 14, 2022." Order No. 22-UI-200161 Exhibit 1 at 2.

(2) On March 25, 2022, the Department mailed decision # 111259 to claimant's address on file with the Department. Decision # 111259 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than April 14, 2022." Order No. 22-UI-200160 Exhibit 1 at 2.

(3) On March 30, 2022, the Department mailed decision the March 30, 2022 administrative decision to claimant's address on file with the Department. The March 30, 2022 administrative decision stated, "Any appeal from this decision must filed on or before April 19, 2022 to be timely." Order No. 22-UI-200159 Exhibit 1 at 2.

(4) Claimant did not receive copies of decision # 110510 or 111259 or the March 30, 2022 administrative decision.

(5) Orders No. 22-UI-200161, 22-UI-200160, and 22-UI-200159, mailed to claimant on August 9, 2022, each 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." Orders No. 22-UI-200161, 22-UI-200160, and 22-UI-200159 at 2. Orders No. 22-UI-200161, 22-UI-200160, and 22-UI-

200159 also stated on their respective Certificates of Mailing, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than August 29, 2022.”

(6) Around the time that Orders No. 22-UI-200161, 22-UI-200160, and 22-UI-200159 were issued, claimant was “transient” and was “living in [their] van and with [their] parents on and off.” EAB Exhibit 2 at 1.

CONCLUSIONS AND REASONS: Claimant’s requests for reconsideration are allowed. On reconsideration, EAB Decisions 2023-EAB-0114, 2023-EAB-0115, and 2023-EAB-0116 are reversed and claimant’s late applications for review are allowed. Orders No. 22-UI-200161, 22-UI-200160, and 22-UI-200159 are reversed, claimant’s late requests for hearing on decisions # 110510 and 111259 and the March 30, 2022 administrative decision are allowed, and claimant is entitled to hearings on the merits of those decisions.

Reconsideration. ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including “the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law.” The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2) (May 13, 2019).

EAB dismissed claimant’s late applications for review without prejudice and subject to claimant filing timely requests for reconsideration within 20 days after EAB’s dismissal decisions were issued. Claimant filed requests for reconsideration consistent with the requirements set forth in OAR 471-041-0145. The requests for reconsideration are, therefore, allowed.

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 applications for review of Orders No. 22-UI-200161, 22-UI-200160, and 22-UI-200159 were due August 29, 2022. Because claimant did not file their applications for review until September 21, 2022, the applications for review were late. On their written statement included with the requests for reconsideration, claimant stated that they did not recall “ever receiving a letter from the ALJ with an order.” EAB Exhibit 2 at 1. Claimant also stated that they “possibly did not receive the letter” because they were “transient at that point in time.” EAB Exhibit 2 at 1. Claimant’s statements here suggest that, more likely than not, they did not receive copies of the orders under review because they were experiencing homelessness at the time the orders were issued, which was a factor or circumstance beyond their reasonable control.

Additionally, while claimant did not state when that factor or circumstance ceased, it can be inferred from their statement that they eventually learned of the orders under review and filed their applications for review within a “reasonable time.” Claimant filed their requests for reconsideration timely, and stated that they “would have responded to” the orders under review if they had received them. EAB Exhibit 2 at 1. Claimant also stated that they “have set up [their] affairs to come to [their] parents’ house now” and since that time, have responded to every letter received. EAB Exhibit 2 at 1. Given claimant’s timely filing of the reconsideration requests and their above statements, claimant more likely than not filed the applications for review within seven days of learning of them. Therefore, claimant filed the applications for review within a reasonable time and the late applications for review are 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.

The requests for hearing on decisions # 110510 and 111259 were due by April 14, 2022. The request for hearing on the March 30, 2022 administrative decision was due by April 19, 2022. Because claimant did not file their requests for hearing on any of the administrative decisions until May 3, 2022, the requests were late. On their appellant questionnaire response, claimant stated that they did not file timely requests for hearing because they “did not receive notification via mail/phone.” EAB Exhibit 1 at 3. This suggests that claimant never received the underlying administrative decisions, which would constitute a factor beyond claimant’s reasonable control which prevented them from filing timely requests for hearing. Claimant also stated that they “called . . . [and] never heard back,” which prompted them to file the late requests for hearing on May 3, 2022. EAB Exhibit 1 at 3. Given that the record does not show that claimant ever received the underlying administrative decisions, or even that they had notice as to the contents of those decisions after apparently attempting to contact the Department, it can be inferred from the record that the factors which prevented claimant from filing timely requests persisted until the day on which they actually filed the requests. Therefore, claimant filed their late requests for hearing within a reasonable time.

For the above reasons, claimant had good cause for failing to file timely requests for hearing, and filed their late requests for hearing within a reasonable time. Claimant’s late request for hearing on decisions # 110510 and 111259 and the March 30, 2022 administrative decision therefore are allowed, and claimant is entitled to hearings on the merits of those decisions.

DECISION: Claimant’s requests for reconsideration of EAB Decisions 2023-EAB-0114, 2023-EAB-0115, and 2023-EAB-0116 are allowed. On reconsideration, EAB Decisions 2023-EAB-0114, 2023-EAB-0115, and 2023-EAB-0116 are reversed, claimant’s late applications for review are allowed, Orders No. 22-UI-200161, 22-UI-200160, and 22-UI-200159 are reversed, claimant’s late requests for hearing are allowed, and claimant is entitled to hearings on the merits of decisions # 110510 and 111259 and the March 30, 2022 administrative decision.

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

DATE of Service: March 17, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-200161, 22-UI-200160, and 22-UI-200159 or return these matter to EAB. Only timely applications for review of the subsequent orders will cause these matters 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

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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

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