

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0225

Late Applications for Review Allowed
Order Nos. 22-UI-201105 and 22-UI-201100 Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On March 4, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work from January 10, 2021 through February 13, 2021 (weeks 02-21 through 06-21) and was for benefits for those weeks and until the reason for the denial had ended (decision # 141953). On March 24, 2021, decision # 141953 became final without claimant having filed a request for hearing. On February 23, 2022, the Department served notice of an administrative decision based in part on decision # 141953, concluding that claimant was overpaid \$785 in regular unemployment insurance (regular UI) benefits and \$1,500 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay (decision # 124101). On March 15, 2022, decision # 124101 became final without claimant having filed a request for hearing.

On April 27, 2022, claimant filed late requests for hearing on decisions # 141953 and 124101. ALJ Kangas considered the requests, and on August 23, 2022, issued Order Nos. 22-UI-201105 and 22-UI-201100, dismissing the requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by September 6, 2022. On September 12, 2022, Order Nos. 22-UI-201105 and 22-UI-201100 became final without claimant having filed an appellant questionnaire response or applications for review with the Employment Appeals Board (EAB). On September 15, 2022, claimant filed a late response to the appellant questionnaire and late applications for review of Order Nos. 22-UI-201105 and 22-UI-201100 with EAB. On February 13, 2023, ALJ Kangas mailed letters to claimant stating that because their response to the appellant questionnaire was late, it would not be considered, another order would not be issued, and Order Nos. 22-UI-201105 and 22-UI-201100 remained in effect. The matter comes before EAB based upon claimant's September 15, 2022 applications for review.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 22-UI-201105 and 22-UI-201100. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0224 and 2023-EAB-0225).

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 appellant questionnaire response claimant included with their application for review, which has been marked as EAB Exhibit 1, and a copy of decision # 141953, which has been marked as EAB Exhibit 2, and copies provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1 and 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 exhibits will remain in the record.

FINDINGS OF FACT: (1) Decision # 141953, mailed to claimant on March 4, 2021, 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 March 24, 2021.” EAB Exhibit 2 at 2.

(2) Decision # 124101, mailed to claimant on February 23, 2022, stated, “If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before March 15, 2022 to be timely.” Exhibit 1 at 3.

(3) Claimant was in a residential treatment center from February 12, 2021 until May 6, 2021, and did not receive decisions # 141953 and 124101 while in treatment.

(4) In March 2022, claimant received decisions # 141953 and 124101. EAB Exhibit 1 at 1.

(5) Claimant filed their requests for hearing on decisions # 141953 and 124101 on April 27, 2022.

(6) Order No. 22-UI-201105, mailed to claimant on August 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-201105 at 2. Order No. 22-UI-201105 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 September 12, 2022.”

(7) Order No. 22-UI-201100, mailed to claimant on August 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-201100 at 2. Order No. 22-UI-201100 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 September 12, 2022.”

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Order Nos. 22-UI-201105 and 22-UI-201100 are allowed. Claimant’s requests for hearing on decisions # 141953 and 124101 are dismissed.

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 Order Nos. 22-UI-201105 and 22-UI-201100 were due by September 12, 2022. Because claimant did not file their applications for review until September 15, 2022, the applications for review were late. In the written statement received with the applications for review, claimant wrote that the applications for review were late because claimant “recently moved to Washington State and just received [the orders under review] on September 13, 2022.” EAB Exhibit 1 at 2. Claimant therefore filed their applications late due to circumstances that were likely beyond their reasonable control. The circumstances that prevented the timely filing ceased to exist on September 13, 2022, when claimant received the orders under review. Because claimant filed their applications for review within seven days of September 13, 2022, the applications for review were filed within a “reasonable time.” Accordingly, claimant’s late applications for review of Order Nos. 22-UI-201105 and 22-UI-201100 are allowed.

Late requests 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.

On March 4, 2021, the Department mailed decision # 141953 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 24, 2021. On February 23, 2022, the Department mailed decision # 124101 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 15, 2022. Claimant did not file a request for hearing on decision # 141953 or 124101 until April 27, 2022. Accordingly, claimant’s requests for hearing were late.

Claimant wrote in their response to the appellant questionnaire that they were in a residential treatment center from February 12, 2021 until May 6, 2021, and did not receive mail during that time. EAB Exhibit 1 at 2-3. Claimant stated they received the administrative decisions in March 2022. EAB Exhibit 1 at 2-3. On these facts, good cause existed to extend the filing deadlines until claimant received the decisions in March 2022. However, claimant did not file their requests for hearing until April 27, 2022, more than seven days after the factors that prevented claimant’s timely filing ceased to exist when claimant received the decisions in March 2022. Claimant therefore has not shown that the requests for hearing were filed within a “reasonable time.” The requests for hearing were therefore subject to dismissal.

For these reasons, the late requests for hearing on decision # 141953 and 124101 are dismissed.

DECISION: Order Nos. 22-UI-201105 and 22-UI-201100 are affirmed.

D. Hettle and A. Steger-Bentz;

S. Serres, not participating.

DATE of Service: February 28, 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

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.

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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