

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0259

Late Applications for Review Allowed
Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On September 1, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available, able, or actively seeking work from August 8 through 14, 2021 (week 32-21) and was ineligible for benefits for that week. On September 9, 2021, the Department served notice of an administrative decision concluding that claimant was not available, able, or actively seeking work from August 15 through 21, 2021 (week 33-21) and was ineligible for benefits for that week. Claimant filed a timely request for hearing. On April 22, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for May 3, 2022. On May 3, 2022, claimant failed to appear at the hearing, and on May 5, 2022, ALJ Frank issued Orders No. 22-UI-192954 and 22-UI-192953, dismissing claimant's request for hearing for failure to appear.

On May 18, 2022, claimant filed a timely request to reopen the May 5, 2022 hearing. ALJ Kangas considered claimant's request, and on October 11, 2022 issued Orders No. 22-UI-204705 and 22-UI-204706, dismissing the request and leaving Orders No. 22-UI-192954 and 22-UI-192953 undisturbed. On October 31, 2022, Orders No. 22-UI-204705 and 22-UI-204706 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On February 27, 2023, claimant filed late applications for review of Orders No. 22-UI-204705 and 22-UI-204706 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-204705 and 22-UI-204706. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0259 and 2023-EAB-0260).

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 submitted with their applications 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 will remain in the record.

FINDING OF FACT: (1) Order No. 22-UI-204705, mailed to claimant on October 11, 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-204705 at 3. Order No. 22-UI-204705 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before October 31, 2022 to be timely.”

(2) Order No. 22-UI-204706, mailed to claimant on October 11, 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-204706 at 3. Order No. 22-UI-204706 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before October 31, 2022 to be timely.”

(3) Claimant did not receive Order No. 22-UI-204705 or Order No. 22-UI-204706 in the mail. Claimant attempted to contact the department to receive an update on his case, but was unsuccessful. EAB Exhibit 1 at 1.

(4) Claimant eventually reached a department representative, updated his address, and was informed that he would receive a “packet” from the Department. EAB Exhibit 1 at 1. Claimant did not receive the packet. EAB Exhibit 1 at 1. Claimant then contacted the Department representative again, was told that the previous attempt to update his address was unsuccessful, that they would attempt to do so again, and would remain the “packet.” Claimant received the “packet” from the second mailing.

(5) On February 27, 2023, claimant filed applications for review of Orders No. 22-UI-204705 and 22-UI-204706.

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 22-UI-204705 and 22-UI-204706 are allowed. Claimant’s request to reopen the May 3, 2022 hearing is denied.

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 of review for Orders No. 22-204705 and 22-UI-204706 were due on October 31, 2022. Because claimant did not file their applications for review until February 27, 2023, the applications for review were late. Claimant provided a written statement with the applications of review that described the circumstances that prevented timely filing and established good cause for filing late. Claimant did not receive Orders No. 22-UI-204705 and 22-UI-204706 in the mail. Claimant moved and attempted to

change his address. After numerous attempts, claimant eventually reached a Department representative and believed his address had been updated. However, the initial attempt by this representative was unsuccessful. Not receiving the orders in the mail, despite attempting update his address with the Department, was a circumstance beyond claimant's reasonable control that prevented a timely filing of his applications for review. This circumstance ended when claimant finally received the Orders from the Department. Though claimant did not state which date he received the orders, given his numerous contact attempts, it is reasonable to infer that claimant acted with diligence upon receiving it. It is therefore more likely than not that claimant filed his applications for review within a reasonable time after the circumstances that prevented him from timely filing ceased to exist. Claimant therefore has established good cause to extend the filing deadline to February 27, 2023, and the applications for review of Orders No. 22-UI-204705 and 22-UI-204706 are allowed.

Request to Reopen. EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the orders under review are **adopted**. Claimant's request to reopen the May 5, 2022 hearing is denied.

DECISION: Orders No. 22-UI-204705 and 22-UI-204706 are affirmed.

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

DATE of Service: March 23, 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.

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