

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0273

Late Application for Review Allowed
Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On June 21, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received benefits to which they were not entitled, and assessing an overpayment of \$2,416 in regular unemployment insurance benefits and \$8,400 in Federal Pandemic Unemployment Compensation (FPUC) (decision # 112858). On July 11, 2022, decision # 112858 became final without claimant having filed a request for hearing. On August 15, 2022, claimant filed a late request for hearing. On September 9, 2022, the Department reissued decision # 112858 to correct a typographical error in the overpayment total, and extended the deadline for appeal to September 29, 2022. ALJ Kangas considered claimant's August 15, 2022 request for hearing, and on January 23, 2023 issued Order No. 23-UI-213416, dismissing claimant's request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 6, 2023. On February 13, 2023, Order No. 23-UI-213416 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On March 1, 2023, claimant filed a late response to the appellant questionnaire and a late application for review with EAB. This matter comes before EAB based upon claimant's late application for review of Order No. 23-UI-213416.

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, 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.

FINDINGS OF FACT: (1) On June 21, 2022, the Department mailed decision # 112858 to claimant's address of record on file with the Department. Claimant did not receive this copy of decision # 112858 until August 2, 2022, because they were in the process of moving and were having their mail forwarded.

(2) On August 15, 2022, claimant filed a request for hearing on decision # 112858.

(3) On September 9, 2022, the Department mailed a revised copy of decision # 112858 to claimant's address of record on file with the Department. This copy corrected a typographical error in the copy previously mailed and stated, "Any appeal from this decision must be filed on or before September 29, 2022 to be timely." Exhibit 1 at 6. Claimant did not file an additional request for hearing.

(4) On January 23, 2023, the Department mailed Order No. 23-UI-213416 to claimant's address of record on file with the Office of Administrative Hearings (OAH). Its Certificate of Mailing stated, "Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than February 13, 2023."

(5) On February 24, 2023, claimant received Order No. 23-UI-213416. Claimant's receipt of the order was delayed because it had been delivered to another family living at claimant's address.

(6) On March 1, 2023, claimant filed a response to the appellant questionnaire and an application for review of Order No. 23-UI-213416.

CONCLUSION AND REASONS: Claimant's late application for review is allowed. Claimant's late request for hearing is allowed. Order No. 23-UI-213416 is set aside, and the matter remanded for a hearing on the merits of decision # 112858.

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. 23-UI-213416 was due February 6, 2022. Because claimant did not file their application for review until March 1, 2023, the application for review was late. Claimant provided a written statement with the application for review. In it, claimant explained that their address is shared with another family, and the order under review was delivered to the other family, delaying claimant's receipt of it until February 24, 2023. EAB Exhibit 1 at 2. This constituted a circumstance beyond claimant's reasonable control that prevented timely filing of their application for review. This circumstance ceased on February 24, 2023, when claimant received the order under review. As the application for review was filed within seven days of February 24, 2023, it was filed within a "reasonable time." Therefore, good cause exists to extend the filing period to March 1, 2023, and claimant's late application for review is 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 order under review concluded that claimant’s August 15, 2022 request for hearing was late because the deadline to file a request for hearing on decision # 112858 was June 21, 2022. Order No. 23-UI-213416 at 1. The record on direct review does not support this conclusion.

On June 21, 2022, the Department mailed decision # 112858 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 July 11, 2022. Claimant did not file a request for hearing on decision # 112858 until August 15, 2022. Therefore, claimant’s request would ordinarily have been considered late. However, on September 9, 2022, the Department mailed claimant a revised copy of decision # 112858. This copy stated that the deadline to appeal was September 29, 2022. As claimant had already filed a request for hearing on decision # 112858 that had not yet been scheduled for hearing, claimant understandably did not file a second request for hearing on decision # 112858 at that time. Because claimant’s August 15, 2022 request for hearing was filed prior to the September 29, 2022 deadline stated on the second copy of decision # 112858, claimant’s request for hearing is considered timely, and is allowed. A hearing on the merits of decision # 112858 is therefore required.

DECISION: Order No. 23-UI-213416 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: April 3, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-213416 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter 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

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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