

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0313

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

PROCEDURAL HISTORY: On July 6, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision assessing an overpayment of \$664 in regular unemployment insurance (regular UI) benefits and \$600 in Federal Pandemic Unemployment Compensation benefits (FPUC) that claimant was liable to repay (decision # 112801). On July 26, 2022, decision # 112801 became final without claimant having filed a request for hearing. On August 2, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on November 8, 2022 issued Order No. 22-UI-206864, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 22, 2022. On November 28, 2022, Order No. 22-UI-206864 became final without claimant having filed a response to the appellant questionnaire or an application for review of Order No. 22-UI-206864. On November 30, 2022, claimant filed a late response to the appellant questionnaire and a late application for review of Order No. 22-UI-206864 with the Employment Appeals Board (EAB). On March 20, 2023, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's response to the appellant questionnaire or issue another order regarding this matter because the questionnaire response was late. This matter comes before EAB based upon claimant's November 30, 2022 late application for review of Order No. 22-UI-206864.

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 response to the appellant questionnaire, which is also the written statement claimant provided with their late application for review. This 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 July 12, 2021, claimant filed an initial claim for unemployment insurance benefits. Thereafter, claimant claimed and was paid benefits. Claimant last claimed benefits in early February 2022.¹

(2) On July 6, 2022, the Department mailed decision # 112801 to claimant's address on file with the Department. Decision # 112801 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 July 26, 2022 to be timely." Exhibit 1 at 2.

(3) At the time the Department mailed decision # 112801, claimant had a broken or misplaced mailbox key and could not access their mailbox in a reliable manner. On or shortly after July 27, 2022, claimant resolved their issue with the mailbox key, checked their mail, and realized the Department had mailed decision # 112801 to them and that the deadline to appeal the decision had passed. On August 2, 2022, claimant filed a late request for hearing on decision # 112801.

(4) At some point prior to November 8, 2022, claimant moved residences from one street address in Bend, Oregon to a new street address in Bend. Claimant did not inform the Department or OAH of their updated address. However, claimant did arrange for the U.S. Postal Service to forward mail to the new address.

(5) On November 8, 2022, OAH mailed Order No. 22-UI-206864 to claimant's address on file with OAH, which was claimant's old address. Order No. 22-UI-206864 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-206864 at 2. Order No. 22-UI-206864 also stated on its certificate of mailing that "Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than November 28, 2022."

(6) On November 25, 2022, the U.S. Postal Service placed a mail forwarding label on the envelope containing Order No. 22-UI-206864. On that date, or possibly as late as November 28, 2022, claimant received the order. Claimant filed an application for review of Order No. 22-UI-206864 on November 30, 2022.

CONCLUSIONS AND REASONS: Claimant's late application for review is allowed. Order No. 22-UI-206864 is reversed, claimant's late request for hearing is allowed, and a hearing on the merits of decision # 112901 is required.

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

¹ EAB has taken notice of these facts, which are contained in Employment Department records. Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

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. 22-UI-206864 was due by November 28, 2022. Because claimant did not file their application for review until November 30, 2022, the application for review was late. Claimant provided a written statement with the application for review. In it, claimant explained that Order No. 22-UI-206864 was mailed to their old address before reaching them at their new one. EAB Exhibit 1 at 4. Claimant enclosed the envelope containing the order, which shows the U.S. Postal Service placed a mail forwarding label on the envelope containing Order No. 22-UI-206864 on November 25, 2022. EAB Exhibit 1 at 5.

This evidence shows that the earliest claimant could have received Order No. 22-UI-206864 was November 25, 2022. Claimant had exercised reasonable diligence by arranging for the U.S. Postal Service to forward mail to their new address, and given that OAH mailed Order No. 22-UI-206864 to claimant on November 8, 2022, the U.S. Postal Service's failure to forward Order No. 22-UI-206864 until November 25, 2022 was a factor beyond claimant's reasonable control. That factor ceased upon claimant's receipt of the order. Claimant filed their application for review on November 30, 2022, which was within seven days of November 25, 2022, the earliest date that claimant could have received Order No. 22-UI-206864. Claimant therefore filed their application for review within a reasonable time after the circumstances that prevented a timely filing ceased to exist. Claimant established good cause to extend the filing deadline to November 30, 2022, and the 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.

On July 6, 2022, the Department mailed decision # 112801 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 26, 2022. Claimant did not file a request for hearing on decision # 112801 until August 2, 2022. Accordingly, claimant's request for hearing was late.

The order under review dismissed claimant's appeal because it concluded that claimant failed to show good cause to extend the deadline to August 2, 2022. Order No. 22-UI-206864 at 1. The record on review does not support this conclusion.

At the time the Department mailed decision # 112801, claimant had a broken or misplaced mailbox key and could not access their mailbox in a reliable manner. EAB Exhibit 1 at 4. On or about July 27, 2022, claimant resolved their issue with the mailbox key. EAB Exhibit 1 at 4. Claimant checked their mail and realized the Department had mailed decision # 112801 to them, and that the deadline to appeal the decision had passed. EAB Exhibit 1 at 4. When the Department mailed decision #112801, claimant had no reason to expect to receive any mailings from the Department given that almost five months had passed since claimant last claimed benefits, and that the Department had paid claimant benefits.

Because claimant had no reason to expect to receive anything in the mail from the Department, claimant's failure to resolve their mailbox key issue more promptly was an excusable mistake. And because claimant's broken or misplaced mailbox key made it impossible for claimant to reliably access their mail before July 27, 2022, claimant's mailbox key issue was a factor beyond claimant's reasonable control. On or shortly after July 27, 2022, claimant resolved the issue with the mailbox key, and the factors that prevented them from filing a timely request for hearing ceased to exist. Claimant filed their late request for hearing on August 2, 2022, which was within a seven-day "reasonable time" after July 27, 2022. Accordingly, claimant established good cause to extend the deadline to file a request for hearing on decision # 112801 to August 2, 2022. Claimant's late request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of decision # 112801.

DECISION: Order No. 22-UI-206864 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 23, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-206864 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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