

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0384

Late Applications for Review Allowed
Reversed & Remanded

PROCEDURAL HISTORY: On January 6, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work from April 25 through May 29, 2021 (weeks 17-21 through 21-21) (decision # 103926). On January 26, 2022, decision # 103926 became final without claimant having filed a request for hearing. On May 17, 2022, the Department served notice of an administrative decision based in part on decision # 103926, concluding that claimant received \$1,185 in Pandemic Emergency Unemployment Compensation (PEUC) and \$1,500 in Federal Pandemic Unemployment Compensation (FPUC) benefits to which they were not entitled and must repay (decision # 162139). On May 18, 2022, the Department served notice of an administrative decision denying claimant's request for a waiver of the \$1,185 PEUC overpayment and the \$1,500 FPUC overpayment assessed in decision # 162139 (decision # 100704). On June 6, 2022, and June 7, 2022, decisions # 162139 and # 100704 became final without claimant having filed a request for hearing.

On July 19, 2022, claimant filed late requests for hearing on decisions # 103926, 162139, and 100704. ALJ Kangas considered claimant's requests, and on November 7, 2022 issued Orders No. 22-UI-206754, 22-UI-206753, and 22-UI-206755, dismissing claimant's requests for hearing as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by November 21, 2022. On November 28, 2022, Orders No. 22-UI-206754, 22-UI-206753, and 22-UI-206755 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 30, 2023, claimant filed late applications for review of Orders No. 22-UI-206754, 22-UI-206753, and 22-UI-206755 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-206754, 22-UI-206753, and 22-UI-206755. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2023-EAB-0383, 2023-EAB-0382, and 2023-EAB-0384).

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 written statement claimant provided with their late 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.

FINDINGS OF FACT: (1) From January through May 2022, claimant lived in Las Vegas, Nevada. EAB Exhibit 1 at 1. On January 6, 2022, May 17, 2022, and May 18, 2022, respectively, the Department mailed decisions # 103926, 162139, and 100704 to claimant's address of record on file with the Department, which was an address in Springfield, Oregon.

(2) On July 19, 2022, claimant filed requests for hearing on decisions # 103926, # 162139, and # 100704. Later that month, claimant moved to a new address and updated their address on file with the Department accordingly.

(3) On November 7, 2022, the Office of Administrative Hearings (OAH) mailed Orders No. 22-UI-206754, 22-UI-206753, and 22-UI-206755 to claimant's previous address. Claimant did not receive them.

(4) On March 30, 2023, claimant filed applications for review of Orders No. 22-UI-206754, 22-UI-206753, and 22-UI-206755.

CONCLUSION AND REASONS: Claimant's late applications for review are allowed. Orders No. 22-UI-206754, 22-UI-206753, and 22-UI-206755 are set aside and the matters remanded for hearings to determine whether to allow claimant's late requests for hearing and, if so, the merits of decisions # 103926, 162139, and 100704.

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 Orders No. 22-UI-206754, 22-UI-206753, and 22-UI-206755 were due November 28, 2022. Because claimant did not file their applications for review until March 30, 2023, the applications for review were late. In their written statement, claimant explained that in July 2022, presumably after filing their late requests for hearing on July 19, 2022, claimant moved to a new address and updated their address of record with the Department. EAB Exhibit 1 at 1. Orders No. 22-UI-206754, 22-UI-206753, and 22-UI-206755 were mailed to the previous address at which claimant no longer lived. This was a factor beyond claimant's reasonable control that prevented timely filing of their applications for review.

Claimant did not include an order or case no. in their applications for review, complained that their “hearing paperwork” was never sent to them, and mistakenly assumed that they therefore had missed a hearing. EAB Exhibit 1. This shows that claimant likely was still unaware of Orders No. 22-UI-206754, 22-UI-206753, and 22-UI-206755 when they filed the applications for review. The circumstances that prevented claimant from filing timely applications for review therefore had not ceased when claimant filed the applications for review, which were filed within a reasonable time. Accordingly, claimant has shown good cause to extend the deadline for timely filing to March 30, 2023, and the applications for review 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. Good cause does not include “[f]ailure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal.” OAR 471-040-0010(1)(b)(A).

A request for hearing on decision # 103926 was due by January 26, 2022. A request for hearing on decision # 162139 was due by June 6, 2022. A request for hearing on decision # 100704 was due by June 7, 2022. Because claimant did not file their requests for hearing until July 19, 2022, the requests were late.

As discussed above, claimant did not receive Orders No. 22-UI-206754, 22-UI-206753, and 22-UI-206755, and therefore did not have an opportunity to complete the appellant questionnaire attached to those orders, or otherwise explain why claimant’s requests for hearing were late. Claimant therefore has not had a reasonable opportunity for a full and fair hearing on whether their late requests for hearing on decisions # 103926, 162139, and 100704 should be allowed, as required under ORS 657.270. Orders No. 22-UI-206754, 22-UI-206753, and 22-UI-206755 therefore are set aside and these matters remanded for a hearing on whether claimant’s late requests for hearing should be allowed and, if so, the merits of decisions # 103926, 162139, and 100704.

Claimant’s written statement suggested that from January through May 2022, claimant lived in Las Vegas, Nevada. EAB Exhibit 1 at 1. The Department mailed decisions # 103926, 162139, and 100704 to claimant’s address of record on file with the Department, which was an address in Springfield, Oregon. The Department mailed decisions # 103926, 162139, and 100704 on January 6, 2022, May 17, 2022, and May 18, 2022, respectively. As a result, claimant likely did not receive the decisions because he was not living at the address of record on file with the Department at the time they were mailed. If claimant’s failure to receive decisions # 103926, 162139, and 100704 constituted a factor beyond claimant’s reasonable control that prevented timely filing of the requests for hearing, claimant may have had good cause for the late filings. Further development of the record is needed to determine if this circumstance constituted a factor beyond claimant’s reasonable control or an excusable mistake; when these factors, if any, ceased; and whether claimant filed their late requests for hearing within a seven day “reasonable time” after those factors ceased. In particular, the ALJ should develop the record as to whether claimant

failed to receive decisions # 103926, 162139, and 100704 due to not notifying the Department of an updated address while claimant was claiming benefits.

For these reasons, Orders No. 22-UI-206754, 22-UI-206753, and 22-UI-206755 are set aside and the matters remanded for a hearing to determine whether claimant had good cause to file their late requests for hearing and, if so, the merits of decisions # 103926, 162139, and 100704.

DECISION: Orders No. 22-UI-206754, 22-UI-206753, and 22-UI-206755 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: May 5, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-206754, 22-UI-206753, or 22-UI-206755, or return these matters 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

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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.

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