

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0406

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On September 29, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work during the weeks including July 25, 2021 through September 4, 2021 (weeks 30-21 through 35-21) and was therefore ineligible to receive unemployment insurance benefits during those weeks (decision # 163347). On October 19, 2021, decision # 163347 became final without claimant having filed a request for hearing. On March 25, 2022, the Department served notice of an administrative decision, based in part on decision # 163347, concluding that claimant received benefits to which he was not entitled and assessing an overpayment of \$3,756 in Pandemic Emergency Unemployment Compensation (PEUC) benefits and \$1,800 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 120334). On April 14, 2022, decision # 120334 became final without claimant having filed a request for hearing. On May 17, 2022, claimant filed late requests for hearing on decisions # 163347 and 120334.

ALJ Kangas considered claimant's requests, and on August 25, 2022 issued Orders No. 22-UI-201278 and 22-UI-201277, dismissing claimant's requests for hearing on decisions # 163347 and 120334, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by September 8, 2022. Claimant filed a timely response to the appellant questionnaire. On February 7, 2023, the Office of Administrative Hearings (OAH) mailed letters stating that Orders No. 22-UI-201278 and 22-UI-201277 were vacated and that new hearings would be scheduled to determine whether claimant had good cause to file the late requests for hearing and, if so, the merits of decisions # 163347 and 120334.

On March 8, 2023, ALJ Lucas conducted a combined hearing on decisions # 163347 and 120334. On March 14, 2023, ALJ Lucas issued Order No. 23-UI-218931, concluding that claimant had good cause to file the late request for hearing on decision # 163347 and affirming that decision on the merits. On March 15, 2023, ALJ Lucas issued Order No. 23-UI-219067, concluding that claimant had good cause to file the late request for hearing on decision # 120334 and affirming that decision on the merits. On April 3, 2023, Order No. 23-UI-218931 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On April 4, 2023, Order No. 23-UI-219067 became

final without claimant having filed an application for review with EAB. On April 5, 2023, claimant filed late applications for review of Orders No. 23-UI-218931 and 23-UI-219067 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-218931 and 23-UI-219067. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0406 and 2023-EAB-0407).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant’s April 5, 2022 applications for review and the postmarked envelopes in which they were mailed, 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) Order No. 23-UI-218931, mailed to claimant on March 14, 2023, 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. 23-UI-218931 at 6. Order No. 23-UI-218931 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before April 3, 2023 to be timely.”

(2) Order No. 23-UI-219067, mailed to claimant on March 15, 2023, 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. 23-UI-219067 at 13. Order No. 23-UI-219067 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before April 4, 2023 to be timely.”

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 23-UI-218931 and 23-UI-219067 are dismissed.

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).

Claimant filed his applications for review of Orders No. 23-UI-218931 and 23-UI-219067 by mail. If an application for review is mailed, “the filing date is the date the document is deposited in the United States mail in an envelope with first class postage, as evidenced by the postmark affixed to the envelope by the United States Postal Service.” OAR 471-041-0065(1)(b) (May 13, 2019). Here, the postmark shows that claimant’s applications for review were mailed, and therefore filed, on April 5, 2023. *See* EAB Exhibit 1 at 2, 4.

The applications for review of Orders No. 23-UI-218931 and 23-UI-219067 were due by April 3, 2023 and April 4, 2023, respectively. Because claimant did not file his applications for review until April 5, 2023, the applications for review were late. Claimant's applications for review did not include a written statement describing the circumstances that prevented him from filing the applications for review by the respective April 3, 2023 and April 4, 2023 deadlines. Accordingly, claimant did not show good cause for the late applications for review, and claimant's late applications for review are dismissed.

DECISION: The applications for review filed April 5, 2023 are dismissed. Orders No. 23-UI-218931 and 23-UI-219067 remain undisturbed.

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

DATE of Service: May 12, 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.

NOTE: The Department may defer recovery or completely waive the overpaid amount if certain standards are met. To make a request for Waiver of Overpayment Recovery, call 503-947-1995 or email OED_Overpayment_unit@employ.oregon.gov. You must submit waiver applications that correspond to the program for which you were overpaid benefits. **If you were overpaid benefits under both state and federal benefits programs, you will need to file two separate waiver applications.** To access a State UI Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for "State UI Overpayment Waiver". To access a Federal Program Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for "Federal Program Overpayment Waiver".

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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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