

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0408

Late Application for Review Allowed
Reversed & Remanded

PROCEDURAL HISTORY: On January 28, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide information in accordance with the Department's rules and was ineligible for benefits from July 18 through September 4, 2021 (weeks 29-21 through 35-21) and until the reason for the denial had ended (decision # 574091). On February 17, 2022, decision # 574091 became final without claimant having filed a request for hearing. On August 23, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on November 23, 2022 issued Order No. 22-UI-208094, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by December 7, 2022. On December 13, 2022, Order No. 22-UI-208094 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On February 27, 2023, claimant filed a late application for review of Order No. 22-UI-208094 with EAB.

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 statement claimant included with their late 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) Decision # 574091, mailed to claimant's address of record on file with the Department on January 28, 2022, stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than February 17, 2022." Exhibit 1 at 2.

(2) On August 23, 2022, claimant inquired with the Department about receiving benefit payments for the weeks from July 18 through September 4, 2021. Exhibit 2 at 1. This inquiry was construed as a late request for hearing on decision # 574091.

(3) Order No. 22-UI-208094, mailed to claimant on November 23, 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-208094 at 2. Order No. 22-UI-208094 also stated on its Certificate of Mailing, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than December 13, 2022.”

(4) Claimant did not receive Order No. 22-UI-208094 in the mail, and was still unaware of the order when, on February 27, 2023, they inquired with the Department regarding the status of their late request for hearing on decision # 574091, stating they had “heard nothing back.” EAB Exhibit 1 at 3. This inquiry was construed as a late application for review of Order No. 22-UI-208094.

CONCLUSION AND REASONS: Claimant’s late application for review is allowed. Order No. 22-UI-208094 is set aside and this matter remanded for additional proceedings to determine whether claimant’s late request for hearing on decision # 574091 should be allowed, and if so, the merits of that decision.

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. 22-UI-208094 was due by December 13, 2022. Because claimant did not file their application for review until February 27, 2023, the application for review was late.

Claimant’s February 27, 2023 inquiry into the status of their late request for hearing, which was construed as a late application for review of Order No. 22-UI-208094, shows that claimant likely had not received Order No. 22-UI-208094 in the mail, and that claimant was unaware that the order had been issued. Claimant’s failure to receive Order No. 22-UI-208094 constituted a circumstance beyond claimant’s reasonable control that prevented them from timely filing their application for review. This factor continued through February 27, 2023 when claimant made the inquiry that was construed as a late application for review. Accordingly, claimant has shown good cause to extend the deadline for timely filing their application for review a “reasonable time” to February 27, 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.

On January 28, 2022, the Department mailed decision # 574091 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 February 17, 2022. Claimant did not file a request for hearing on decision # 574091 until August 23, 2022. Accordingly, claimant's request was late.

Because claimant did not receive Order No. 22-UI-208094, they have not had the opportunity to respond to the appellant questionnaire included with that order, or therefore a reasonable opportunity for a full and fair hearing on why their request for hearing on decision # 574091 was late. Order No. 22-UI-208094 therefore is set aside and this matter remanded for additional proceedings to determine whether claimant's late request for hearing should be allowed, and if so, the merits of decision # 574091.

DECISION: Order No. 22-UI-208094 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 21, 2023

NOTE: The failure of any party to appear at a hearing on remand will not reinstate Order No. 22-UI-208094 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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