

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0411

*Late Applications for Review Allowed
Reversed & Remanded*

PROCEDURAL HISTORY AND FINDINGS OF FACT: On July 9, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving benefits effective November 15, 2020 (decision # 132126). On July 29, 2021, decision # 132126 became final without claimant having filed a request for hearing. On March 17, 2022, the Department served notice of an administrative decision based in part on decision # 132126, assessing an overpayment of \$1,305 in Pandemic Emergency Unemployment Compensation (PEUC) and \$1,500 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was liable to repay (decision # 143315). On April 6, 2022, decision # 143315 became final without claimant having filed a request for hearing. On August 19, 2022, the Department served notice of an administrative decision denying claimant's request for a waiver of the overpayments of PEUC and FPUC benefits assessed in decision # 143315 (decision # 141329). On September 8, 2022, decision # 141329 became final without claimant having filed a request for hearing.

On October 17, 2022, claimant filed late requests for hearing on decisions # 132126, 143315, and 141329. ALJ Kangas considered claimant's requests, and on February 15, 2023 issued Orders No. 23-UI-216117, 23-UI-216115, and 23-UI-216094, dismissing the requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by March 1, 2023. On March 7, 2023, Orders No. 23-UI-216117, 23-UI-216115, and 23-UI-216094 became final without claimant having filed applications for review with the Employment Appeals Board (EAB). On April 5, 2023, claimant filed late applications for review of Orders No. 23-UI-216117, 23-UI-216115, and 23-UI-216094 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-216117, 23-UI-216115, and 23-UI-216094. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2023-EAB-0413, 2023-EAB-0412, and 2023-EAB-0411).

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.

Additionally, claimant attached a series of income tax documents to their written statement provided with their late applications for review. EAB treated the attached documents as a request for EAB to consider additional evidence pursuant to OAR 471-041-0090(1)(b). That provision requires the requesting party to establish that the evidence is relevant and material to EAB's determination. EAB did not consider the income tax documents because they were not relevant and material to EAB's determination in these matters, which relate to claimant's late applications for review and late requests for hearing.

Claimant may offer documentary evidence, such as the income tax documents, into evidence at the remand hearing. At that time, it will be determined if the information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

CONCLUSIONS AND REASONS: Claimant's late applications for review of Orders No. 23-UI-216117, 23-UI-216115, and 23-UI-216094 are allowed. Orders No. 23-UI-216117, 23-UI-216115, and 23-UI-216094 are set aside, and the matters remanded for a hearing on whether claimant's late requests for hearing on decisions # 132126, 143315, and 141329 should be allowed, and if so, the merits of those decisions.

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. 23-UI-216117, 23-UI-216115, and 23-UI-216094 were due by March 7, 2023. Because claimant did not file their applications for review until April 5, 2023, the applications for review were late.

Claimant provided a written statement with their applications for review. In it, claimant explained that they sustained a traumatic brain injury in 2021 and that the injury worsened in 2022. The traumatic brain injury compromised claimant's memory and executive functioning. Claimant additionally stated that they missed the deadline to appeal Orders No. 23-UI-216117, 23-UI-216115, and 23-UI-216094 because of "overwhelm, poor organization and trying to meet [their] basic survival needs." EAB Exhibit 1 at 1.

The information contained in the claimant's written statement is sufficient to show that claimant failed to file timely applications for review due to their diminished cognitive function, which was a circumstance beyond their reasonable control. Because claimant's difficulties with memory and executive functioning worsened in 2022 and appear ongoing in nature, the record on review indicates that the circumstance preventing a timely filing likely continued until at least seven days before claimant filed their applications for review, April 5, 2023. Claimant therefore filed their applications for review within a reasonable time after the circumstances that prevented a timely filing ceased to exist. Accordingly, claimant established good cause to extend the filing deadline to April 5, 2023, and the late 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.

On July 9, 2021, the Department mailed decision # 132126 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 29, 2021. On March 17, 2022, the Department mailed decision # 143315 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 April 6, 2022. On August 19, 2022, the Department mailed decision # 141329 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 September 8, 2022.

Claimant did not file a request for hearing on decisions # 132126, 143315, and 141329 until October 17, 2022. Accordingly, claimant's requests for hearing were late.

Claimant's written statement suggests that claimant may have failed to meet the respective appeal deadlines for decisions # 132126, 143315, and 141329 because of their diminished brain function resulting from their traumatic brain injury. If claimant's memory and executive functioning difficulties prevented them from appealing by the deadlines, claimant's late requests for hearing may have been due to factors beyond their reasonable control. However, further inquiry is needed to determine whether claimant had good cause to file the late requests for hearing, and whether they filed the late requests for hearing within a reasonable time.

On remand, the ALJ should develop the record to determine precisely when claimant's brain injury occurred in 2021 and when it worsened in 2022. The ALJ should make inquiry to determine if, and if so how, the injury affected claimant's ability to appeal decision # 132126 by July 9, 2021, decision # 143315 by April 6, 2022, and/or decision # 141329 by September 8, 2022. The ALJ should also ask questions to develop whether the Department identified claimant as a person with memory and executive functioning difficulties and whether it offered claimant any support that might have assisted claimant with filing timely appeals. To the extent that claimant's diminished cognitive function constituted a factor beyond their control preventing a timely appeal of decisions # 132126, 143315, or 141329, the ALJ should ask questions to determine whether and when that factor ceased to exist and, if so, whether

claimant's October 17, 2022 requests for hearing were filed within a seven-day "reasonable time" thereafter.

Orders No. 23-UI-216117, 23-UI-216115, and 23-UI-216094 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 # 132126, 143315, and 141329.

DECISION: Orders No. 23-UI-216117, 23-UI-216115, and 23-UI-216094 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 11, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 23-UI-216117, 23-UI-216115, or 23-UI-216094 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

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 الاستئناف 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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