

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0469-R

Request for Reconsideration Allowed
EAB Decision 2023-EAB-0469 Adhered to on Reconsideration
Late Application for Review Dismissed

PROCEDURAL HISTORY AND FINDINGS OF FACT: On December 2, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was disqualified from receiving unemployment insurance benefits effective November 7, 2021 (decision # 63244).¹ Claimant filed a timely request for hearing. On September 19, 2022, the Office of Administrative Hearings (OAH) served notice of a telephone hearing on decision # 63244 scheduled for October 3, 2022 at 2:30 p.m. to be presided over by ALJ Blam-Linville. Also on September 19, 2022, OAH served notices of a combined telephone hearing regarding two separate administrative decisions for which claimant had requested hearings, for which a combined hearing was scheduled for October 3, 2022 at 1:30 p.m. to be presided over by ALJ Blam-Linville. Each of the three notices of hearing contained the same telephone number and access code.

On October 3, 2022, claimant appeared for the 1:30 p.m. hearing and ALJ Blam-Linville conducted a hearing on those separate matters. At approximately the mid-point of the 1:30 p.m. hearing, claimant began to testify about their work separation. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 29:53. ALJ Blam-Linville informed claimant that “you may have another hearing at some point in time on the separation issue, but neither of our two issues today actually involve the separation.” Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 30:55. The ALJ also stated, “None of this is relevant to either of the two issues before us here today. Again, you might have another hearing coming up where this is relevant but, unfortunately, I only have jurisdiction to hear issues, um, for the late report so the failed claim [*sic*] to timely report benefits and then whether or not you were actively seeking work, those are the only two issues at hearing here today.” Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 32:00.

¹ Although decision # 63244 listed a disqualification date of November 17, 2021, that date is presumed to be a typographical error. Because November 7, 2021 is the Sunday preceding the date of the November 8, 2021 discharge listed in decision # 63244’s findings, the date of disqualification was November 7, 2021.

At about the 57 and 58-minute marks of the 1:30 p.m. hearing, chimes are audible, indicating that individuals had joined the hearing. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 57:39, 58:51. ALJ Blam-Linville asked for the individuals who joined to identify themselves but they failed to do so. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 59:16. At about the one-hour mark of the 1:30 p.m. hearing, more chimes are audible, indicating individuals had joined the hearing. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 1:00:18, 1:01:06; 1:01:23; 1:01:37. Then, at approximately the one-hour, two-minute mark, ALJ Blam-Linville concluded the 1:30 p.m. hearing. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 01:02:15.

The audio record of the 1:30 p.m. hearing continued recording. At approximately the one-hour, two-minute mark of the recording, which corresponded to just after 2:30 p.m., an electronically generated voice stated, “your host is exiting the conference” and claimant stated “hello.” Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 01:02:29. ALJ Adamson then identified himself, asked if claimant was present, and received no answer. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 01:02:39. Additional ALJs joined the hearing for observation and training purposes. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 01:03:50; 01:04:20. ALJ Adamson again asked if claimant was present and received no answer. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 01:06:08. At about the one-hour, 14-minute mark of the recording, ALJ Adamson announced his intention to dismiss claimant’s request for hearing on decision # 63244 for failure to appear. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 01:13:49 to 01:14:33. The employer did not appear for the hearing.

On October 11, 2022, ALJ Adamson issued Order No. 22-UI-204689, dismissing claimant’s request for hearing for failure to appear and leaving decision # 63244 undisturbed. On October 24, 2022, claimant faxed an application for review form to the Employment Appeals Board (EAB) requesting review of Order No. 22-UI-204689. Pursuant to OAR 471-041-0060(4) (effective May 13, 2019), because claimant was deemed to have failed to appear at the hearing scheduled for October 3, 2022 at 2:30 p.m., EAB treated claimant’s October 24, 2022 submission as a timely request to reopen the hearing under ORS 657.270(5). On October 31, 2022, EAB mailed a letter notifying claimant that their application for review was being treated as a request to reopen the October 3, 2022 hearing, that EAB was sending claimant’s reopen request to OAH for further processing, and that EAB would take no further action in the case. The letter also specified that if OAH issued a new order in the case, claimant would have the right to appeal the new order to EAB by filing an application for review.

ALJ Kangas considered claimant’s request to reopen, and on March 9, 2023 issued Order No. 23-UI-218485, denying claimant’s request to reopen and leaving Order No. 22-UI-204689 undisturbed. On March 29, 2023, Order No. 23-UI-218485 became final without claimant having filed an application for review with EAB. On April 18, 2023, claimant filed a late application for review of Order No. 23-UI-218485 with EAB.

On May 23, 2023, EAB issued EAB Decision 2023-EAB-0469, dismissing claimant’s application for review as late without good cause and leaving Order No. 23-UI-218485 undisturbed, but issuing the dismissal without prejudice and subject to claimant filing a request for reconsideration. On June 8, 2023, claimant filed a timely request for reconsideration of EAB Decision 2023-EAB-0469. This decision is issued pursuant to EAB’s authority under ORS 657.290(3).

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 request for reconsideration, 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.

CONCLUSIONS AND REASONS: Claimant’s request for reconsideration is allowed. EAB Decision 2023-EAB-0469 is adhered to on reconsideration. Claimant’s late application for review of Order No. 23-UI-218485 is dismissed. Order No. 23-UI-218485 remains undisturbed.

Request for Reconsideration. ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including “the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law.” “Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice.” OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

On May 23, 2023, EAB dismissed claimant’s late application for review without prejudice and subject to claimant filing a timely request for reconsideration within 20 days after EAB’s dismissal decision was issued. *See* EAB Decision 2023-EAB-0469. Specifically, the decision pointed out that claimant’s application for review of Order No. 23-UI-218485 was late, but that the deadline for filing the application for review may be extended a reasonable time upon a showing of good cause. EAB Decision 2023-EAB-0469 at 3. The decision further stated that if claimant believed they had good cause and filed their late application for review within a reasonable time, they might wish to file a request for reconsideration. EAB Decision 2023-EAB-0469 at 3. Then, for claimant’s benefit, EAB Decision 2023-EAB-0469 listed all of the elements claimant needed to fulfill in order for their request for reconsideration to be successful. EAB Decision 2023-EAB-0469 at 3. This included that claimant provide additional specific details about the reason they filed their application for review of Order No. 23-UI-218485 late, with an indented message reminding claimant that the information needed was specifically why they did not file their application for review of Order No. 23-UI-218485 by the March 29, 2023 deadline. EAB Decision 2023-EAB-0469 at 3.

Claimant filed a request for reconsideration that did not provide any specific details about the reason they failed to file their application for review of Order No. 23-UI-218485 by the March 29, 2023 deadline. *See* EAB Exhibit 1 at 1-2. However, the request for reconsideration is consistent with the requirements set forth in OAR 471-041-0145 regarding including a statement that a copy was provided to the opposing party and it being filed on or before the 20th day after the decision sought to be reconsidered was mailed. The request for reconsideration is, therefore, allowed.

Late Application for Review. An application for review is timely if it is filed within 20 days of the date that 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).

Order No. 23-UI-218485, mailed to claimant on March 9, 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-218485 at 3. Order No. 23-UI-218485 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 March 29, 2023.”

Thus, the application for review of Order No. 23-UI-218485 was due by March 29, 2023 and claimant was given notice of this deadline. Because claimant did not file their application for review until April 18, 2023, the application for review was late. Claimant’s request for reconsideration included a written statement. However, that statement does not provide an explanation for why claimant failed to file their application for review by the March 29, 2023 deadline. *See* EAB Exhibit 1 at 1-2.

Instead, claimant explained that they believed they were deceived into thinking that the hearing that began at 1:30 p.m. on October 3, 2022 was for all three of their cases and was confused as to why the ALJ who presided over the 1:30 p.m. hearing would not allow them to testify about the circumstances of their discharge. EAB Exhibit 1 at 2. Claimant asserted that “[t]o serve justice would have been for the judge to say, ‘Stay on this call and you will have your termination hearing with another judge after I hang up, and the new judge will proceed.’” EAB Exhibit 1 at 1. Claimant also contended in their request that “there should be consideration and grace to just set a date and proceed.” EAB Exhibit 1 at 1.

It is regrettable that claimant could not be heard on the merits of decision # 63244. However, EAB is not permitted to address the issue of whether claimant’s request to reopen should be allowed, and a merits hearing scheduled, because claimant’s appeal of Order No. 23-UI-218485 was late, and claimant failed to provide any information sufficient to support good cause to allow the late appeal. Claimant’s request for reconsideration does not contain any details to show that factors beyond their reasonable control or an excusable mistake prevented claimant from filing an appeal by March 29, 2023, or that their April 18, 2023 late appeal was filed within a seven-day reasonable time of any such factor ceasing to exist. Accordingly, claimant did not show good cause for the late application for review, and claimant’s late application for review is dismissed.

DECISION: Claimant’s request for reconsideration is allowed. EAB Decision 2023-EAB-0469 is adhered to on reconsideration. The application for review filed April 18, 2023 is dismissed. Order No. 23-UI-218485 remains undisturbed.

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

DATE of Service: July 20, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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www.Oregon.gov/Employ/eab

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