

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0552

Late Application for Review Allowed
Order No. 22-UI-192912 Reversed
Late Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On December 11, 2020, 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 unemployment insurance benefits effective September 15, 2019 (decision # 101950). Claimant filed a timely request for hearing. On January 4, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for January 14, 2022. On January 14, 2022, claimant failed to appear for the hearing, and ALJ Lucas issued Order No. 22-UI-184116, dismissing claimant's request for hearing for failure to appear and leaving decision # 101950 undisturbed. On February 3, 2022, Order No. 22-UI-184116 became final without claimant having filed a request to reopen. On March 1, 2022, claimant filed a late request to reopen the hearing. ALJ Kangas considered claimant's request, and on May 4, 2022 issued Order 22-UI-192912, dismissing the request as late without good cause and leaving Order No. 22-UI-184116 undisturbed. On May 24, 2022, Order No. 22-UI-192912 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On May 12, 2023, claimant filed a late application for review of Order No. 22-UI-192912 with the EAB.

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 two declarations, one made by claimant and one made by her representative, which 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) On January 4, 2022, OAH served notice of a hearing scheduled for January 14, 2022, mailed to claimant’s address on file. Claimant did not receive this notice.

(2) Claimant did not attend the January 14, 2022 hearing because she did not receive the notice of the hearing, as she had moved from the address to which that notice was sent. Claimant had her mail forwarded to the new address, and “[A]s soon as I received the first piece of forwarded mail, I notified the Employment Department of my new address three separate ways.” EAB Exhibit 1 at 3. Claimant sent an email with her new address to the Department, mailed a letter to the Department with her new address, and personally delivered a letter stating the updated address. EAB Exhibit 1 at 3–4. The Department did not update claimant’s address.

(3) On January 14, 2022, OAH mailed Order No. 22-UI-184116, which dismissed claimant’s request for hearing due to her failure to appear, to claimant’s previous address. Claimant did not receive Order No. 22-UI-184116. This order was returned to OAH as undeliverable. Order No. 22-UI-192912 at 2.

(4) On March 1, 2022, OAH received a letter from claimant, stating that she had just received the notice of hearing because she had recently moved. This letter was construed as a request to reopen the January 14, 2022 hearing. Order No. 22-UI-192912, which denied claimant’s request to reopen the January 14, 2022 hearing, was mailed to claimant’s previous address. Claimant did not receive Order No. 22-UI-192912.

(5) On April 20, 2023, claimant and her counsel attended a hearing on a separate administrative decision. At this hearing, the ALJ informed claimant and counsel that the hearing request on decision # 101950 had already been dismissed for claimant’s failure to appear. EAB Exhibit 1 at 1-2.

(6) On May 12, 2023, claimant filed an application for review of Order No. 22-UI-192912.

CONCLUSION AND REASONS: Claimant’s late application for review of Order No. 22-UI-192912 is allowed. Claimant’s late request to reopen the January 14, 2022 hearing is allowed and this matter remanded for a hearing on the merits of decision # 101950.

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-192912 was due by May 24, 2022. Because claimant did not file their application for review until May 12, 2023, the application for review was late.

The circumstance that prevented claimant from filing a timely application for review was their lack of receipt of Order No. 22-UI-192912. Claimant's declaration states that they were unaware that there had ever been a decision against them in this case. EAB Exhibit 1 at 4. Additionally, the record shows that Order No. 22-UI-192912 was mailed to claimant's previous address. Claimant did not have access to this address and when the previous order was mailed to this address, it was returned to OAH as undeliverable. Further, this circumstance was outside of claimant's reasonable control because claimant had her mail forwarded to the new address and made multiple attempts to update her address on file with the Department. Given claimant's efforts to update her address, claimant's non-receipt of Order No. 22-UI-192912 was a circumstance outside of her control and establishes good cause for claimant's late application for review.

Further, claimant filed her application for review within a reasonable time after these circumstances ended. Claimant became aware of the adverse result of Order No. 22-UI-192912 when she attended a hearing on a separate administrative decision on April 20, 2023. While claimant became aware of this result on April 20, 2023, the record does not show that claimant became aware of their appeal rights or the deadlines to file an appeal on that date. As such, the circumstances that prevented claimant from filing a timely appeal did not cease at this time, and there is no evidence that this circumstance ceased before claimant filed their application for review on May 12, 2023. Therefore, claimant has established good cause for their application for review of Order No. 22-UI-192912 and it was filed within a reasonable time after these circumstances ended.

Request to Reopen. ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. The period within which a party may request reopening may be extended if the party requesting reopening has good cause for failing to request reopening within the time allowed, and acts within a reasonable time. OAR 471-040-0041(1) (February 10, 2012). "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control. OAR 471-040-0041(2). "A reasonable time," is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(3). The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which OAH shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time. OAR 471-040-0041(4).

The request to reopen the January 14, 2022 hearing was due by February 3, 2022. Because claimant did not submit their request to reopen the hearing until March 1, 2022, the request was late. The order under review concluded that claimant did not have good cause to reopen the January 14, 2022 hearing because claimant "knew she had an appeal pending, did not provide any information, nor is there any of record, that she notified the OAH or the Employment Department of her new address." Order No. 22-UI-192912 at 2. The record does not support this conclusion.

Claimant did not submit a timely request to reopen because she was not aware that her request for hearing was dismissed. This occurred because claimant never received Order No. 22-UI-184116. Because claimant had made multiple attempts to update her address with the Department, her non-receipt of the Order No. 22-UI-184116 was a circumstance outside of her control. This circumstance ended when claimant received the notice of hearing and realized she had missed the January 14, 2022

hearing. This occurred one day before she filed the request to reopen. Since claimant filed her request to reopen within the seven-day reasonable time period after the circumstance preventing her the request ended, the request to reopen is allowed. Further, claimant's late receipt of the notice of hearing was a factor outside of her control that prevented her from attending the January 14, 2022 hearing. Therefore, claimant has established good cause for her request to reopen the hearing and her request to reopen the January 14, 2022 hearing is allowed.

For these reasons, claimant's late application for review is allowed, her late request to reopen the January 14, 2022 hearing is allowed, and this matter is remanded for a hearing on the merits of decision # 101950.

DECISION: Order No. 22-UI-192912 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: June 16, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-192912 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymzmo.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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.