

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0609

Late Applications for Review Dismissed

PROCEDURAL HISTORY AND FINDINGS OF FACT: On November 25, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective August 11, 2019 (decision # 140018). On December 15, 2020, decision # 140018 became final without claimant having filed a request for hearing. On December 9, 2021, the Department served notice of an administrative decision based in part on decision # 140018 concluding that claimant received benefits to which he was not entitled, and assessing an overpayment of \$1,500 in Lost Wages Assistance (LWA) that claimant was liable to repay to the Department (decision # 0561039). On December 29, 2021, decision # 0561039 became final without claimant having filed a request for hearing. On February 24, 2022, claimant filed late requests for hearing on decisions # 140018 and 0561039.

ALJ Kangas considered claimant's requests for hearing, and on May 24, 2022 issued Orders No. 22-UI-194462 and 22-UI-194463, respectively dismissing claimant's requests for hearing on decisions # 140018 and 0561039 as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by June 7, 2022. On June 13, 2022, Orders No. 22-UI-194462 and 22-UI-194463 became final without claimant having filed a response to the appellant questionnaire or applications for review with the Employment Appeals Board (EAB).

On August 12, 2022, the Department served notice of an administrative decision based in part on decision # 140018 concluding that claimant received benefits to which he was not entitled and assessing an overpayment of \$4,550 in regular unemployment insurance (regular UI) benefits and \$10,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was liable to repay the Department (decision # 105332). On September 1, 2022, decision # 105332 became final without claimant having filed a request for hearing. On October 12, 2022, claimant filed a late request for hearing on decision # 105332.

On October 17, 2022, claimant filed a late response to the appellant questionnaire for Orders No. 22-UI-194462 and 22-UI-194463. On November 2, 2022 and November 4, 2022, respectively, the Office of Administrative Hearings (OAH) mailed letters to the parties stating that Orders No. 22-UI-194462 and

22-UI-194463 were cancelled and that hearings would be scheduled to determine whether claimant had good cause to file the late requests for hearing on decisions # 140018 and 0561039, and if so, the merits of those decisions. On November 4, 2022, the Department served notice of a hearing scheduled for December 16, 2022 to determine whether claimant had good cause to file the late request for hearing on decision # 105332 and if so, the merits of that decision, and that the hearing would be consolidated with the hearing on decision # 0561039.

On December 16, 2022, ALJ Mott conducted a hearing on decision # 140018 at which the employer failed to appear, and on December 19, 2022 issued Order No. 22-UI-210300, dismissing claimant's request for hearing on decision # 140018 as late without good cause. Also on December 16, 2022, ALJ Mott conducted a consolidated hearing on decisions # 0561039 and 105332, and on December 19, 2022, issued Orders No. 22-UI-210303 and 22-UI-210304, respectively allowing claimant's late requests for hearing on decisions # 0561039 and 105332 and affirming decisions # 0561039 and 105332 on the merits. On January 9, 2023, Orders No. 22-UI-210300, 22-UI-210303, and 22-UI-210304 became final without claimant having filed applications for review with EAB. On February 2, 2023, claimant filed late applications for review of Orders No. 22-UI-210300, 22-UI-210303, and 22-UI-210304 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-210300, 22-UI-210303, and 22-UI-210304. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2023-EAB-0609, 2023-EAB-0610, and 2023-EAB-0611).

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 provided with claimant's 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.

CONCLUSION AND REASONS: Claimant's late applications for review 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).

The applications for review of Orders No. 22-UI-210300, 22-UI-210303, and 22-UI-210304 were due by January 9, 2023. Because claimant did not file his applications for review until February 2, 2023, the applications for review were late. Claimant's applications for review included a statement that he wanted "to appeal administrative decision # 111347 and would like to have all of [his] cases reopened. . . because [his] paperwork was mailed to a random person and was placed inside their unemployment

envelope[.]” EAB Exhibit 1 at 1. The orders under review do not involve a decision # 111347. Claimant’s statement did not assert that he failed to timely receive Orders No. 22-UI-210300, 22-UI-210303, and 22-UI-210304, or that any of the orders under review were delayed by a mailing error. Therefore, claimant did not describe any circumstances that prevented a timely filing of the applications for review of those orders. Accordingly, claimant failed to establish good cause to extend the deadline to file applications for review of Orders No. 22-UI-210300, 22-UI-210303, and 22-UI-210304, and claimant’s late applications for review are therefore subject to dismissal pursuant to OAR 471-041-0070(3).

DECISION: The applications for review filed February 2, 2023 are dismissed. Orders No. 22-UI-210300, 22-UI-210303, and 22-UI-210304 remain undisturbed.

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

DATE of Service: June 8, 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.

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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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