

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0782

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On December 8, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from June 28 through November 28, 2020 (weeks 27-20 through 48-20) and was ineligible for benefits for those weeks (decision # 125919). On December 28, 2020, decision # 125919 became final without claimant having filed a request for hearing. On December 8, 2021, the Department served notice of an administrative decision based in part on decision # 125919, concluding that claimant received \$1,800 in Lost Wages Assistance (LWA) benefits to which they were not entitled and must repay (decision # 0560577). On December 28, 2021, decision # 0560577 became final without claimant having filed a request for hearing.

On February 11, 2022, claimant filed late requests for hearing on decisions # 125919 and 0560577. ALJ Kangas considered claimant's requests, and on May 16, 2022 issued Orders No. 22-UI-193840 and 22-UI-193838, dismissing requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by May 30, 2022. On June 6, 2022, Orders No. 22-UI-193840 and 22-UI-193838 became final without claimant having filed applications for review with the Employment Appeals Board (EAB). On July 14, 2023, claimant filed late applications for review of Orders No. 22-UI-193840 and 22-UI-193838 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-193840 and 22-UI-193838. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0781 and 2023-EAB-0782).

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 claimant's written statement enclosed with the 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.

Claimant's statement enclosed with the late applications for review also included several attached documents, including copies of a news item, legal authorities relating to the COVID-19 pandemic, and documents apparently relating to claimant's payment of the overpayment assessed by decision # 0560577. EAB did not consider these documents when reaching this decision because claimant did not show, under OAR 471-041-0090(1)(b)(A), that those documents were relevant and material to EAB's determination of whether claimant had good cause to file the late applications for review at issue here.

FINDINGS OF FACT: (1) Order No. 22-UI-193840, mailed to claimant on May 16, 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-193840 at 2. Order No. 22-UI-193840 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 June 6, 2022."

(2) Order No. 22-UI-193838, mailed to claimant on May 16, 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-193838 at 2. Order No. 22-UI-193838 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 June 6, 2022."

CONCLUSIONS AND REASONS: Claimant's late applications for review of Orders No. 22-UI-193840 and 22-UI-193838 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-193840 and 22-UI-193838 were due by June 6, 2022. Because claimant did not file their applications for review until July 14, 2023, the applications for review were late. Claimant provided a written statement with the applications for review. In their statement, claimant indicated that the circumstances which prevented them from filing timely applications for review ceased on May 30, 2022. EAB Exhibit 1 at 1. However, that date preceded the date on which the applications for review were actually due (June 6, 2022). Furthermore, claimant included no details regarding what circumstances, if any, prevented them from filing timely applications for review. Claimant therefore has not shown that they were prevented from filing timely applications for review on Orders No. 22-UI-193840 and 22-UI-193838 due to factors or circumstances beyond their reasonable control. Accordingly, claimant did not show good cause for the late applications for review, and claimant's late applications for review are dismissed.

Most of claimant's written statement appears to relate to concerns other than the timeliness of claimant's applications for review in these matters. For instance, claimant suggested that they were "filing for a late

review after [their] ALJ hearing with Judge Scott,” and later expressed concern about another overpayment decision which assessed an overpayment of “over \$11,000.” EAB Exhibit 1 at 1–2. A review of Department records shows that the Department issued an administrative decision on August 11, 2022 (decision # 142857) which assessed an overpayment of \$11,882 in combined state and federal benefits. This overpayment decision appears to also be based in part on decision # 125919, which found that claimant had not actively sought work, but addressed overpaid regular unemployment insurance, Federal Pandemic Unemployment Compensation, and Pandemic Emergency Employment Compensation benefits, rather than the overpaid LWA benefits at issue in decision # 0560577. Department records also show that claimant filed a timely request for hearing on decision # 142857. It does not appear that a final order has been issued in regards to that decision, although claimant’s statement, above, suggests that there has been a hearing.

Claimant should note that EAB lacks jurisdiction to review matters other than appeals of orders issued by ALJs, and that, as discussed above, EAB cannot review the merits of an order unless that order has either been timely appealed or good cause has been shown for a late appeal of that order. Thus, to the extent that claimant is seeking review of decision # 142857, EAB cannot review the merits of that case because no order has been issued regarding that matter, nor an application for review of any such order filed. Similarly, while the overpayments at issue in both decisions # 142857 *and* 0560577 stem from the determination in decision # 125919 that claimant failed to actively seek work, EAB cannot review the merits of decision # 125919 because claimant did not show good cause for filing a late application for review of the order that originally dismissed claimant’s request for hearing on decision # 125919.

The above notwithstanding, claimant may consider contacting the Department directly regarding the merits of decision # 125919. While EAB expresses no opinion on the merits of that decision, claimant would be within their rights to request that the Department review the case to determine whether any of the COVID-19-era rule amendments (as mentioned in some of the materials that claimant included with their written statement) apply to that case and, if so, whether decision # 125919 merits reconsideration by the Department.

DECISION: The applications for review filed July 14, 2023 are dismissed. Orders No. 22-UI-193840 and 22-UI-193838 remain undisturbed.

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

DATE of Service: August 28, 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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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.

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