

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0958

*Late Applications for Review Allowed
Reversed & Remanded*

PROCEDURAL HISTORY: On November 13, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective July 28, 2019 (decision # 143328). On December 3, 2020, decision # 143328 became final without claimant having filed a request for hearing. On August 30, 2021, the Department served notice of an administrative decision, based in part on decision # 143328, concluding that claimant received benefits to which she was not entitled, and assessing an overpayment of \$13,375 in combined regular unemployment insurance (regular UI), Federal Pandemic Unemployment Compensation (FPUC), and Pandemic Emergency Unemployment Compensation (PEUC) benefits that claimant was required to repay to the Department (decision # 112327). On September 20, 2021, decision # 112327 became final without claimant having filed a request for hearing. On November 23, 2021, the Department served notice of an administrative decision, based in part on decision # 143328, concluding that claimant received benefits to which she was not entitled and assessing an overpayment of \$1,800 in Lost Wages Assistance (LWA) benefits that claimant was required to repay to the Department (decision # 0557429). On December 13, 2021, decision # 0557429 became final without claimant having filed a request for hearing. On April 15, 2022, the Department served notice of an administrative decision denying claimant's request for a waiver of the overpayment that the Department had previously assessed on August 30, 2021 (decision # 125450). On May 5, 2022, decision # 125450 became final without claimant having filed a request for hearing.

On May 10, 2022, claimant filed late requests for hearing on decisions # 143328, 112327, 0557429, and 125450. ALJ Kangas considered claimant's requests, and on October 6, 2022 issued Orders No. 22-UI-

204428, 22-UI-204436, 22-UI-204430, and 22-UI-204429, dismissing claimant's requests for hearing on decisions # 143328, 112327, 0557429, and 125450, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by October 20, 2022. On October 26, 2022, Orders No. 22-UI-204428, 22-UI-204436, 22-UI-204430, and 22-UI-204429 became final without claimant having filed applications for reviews with the Employment Appeals Board (EAB).

On May 23, 2023, claimant, via their counsel, filed a letter with the Office of Administrative Hearings (OAH) that was construed as a late response to the appellant questionnaire.¹ On June 5, 2023, ALJ Kangas mailed letters stating that OAH would not consider claimant's questionnaire response or issue additional orders regarding these matters because the questionnaire response was late. On August 23, 2023, claimant filed late applications for review of Orders No. 22-UI-204428, 22-UI-204436, 22-UI-204430, and 22-UI-204429 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-204428, 22-UI-204436, 22-UI-204430, and 22-UI-204429. For case-tracking purposes, this decision is being issued in quadruplicate (EAB Decisions 2023-EAB-0958, 2023-EAB-0961, 2023-EAB-0960, and 2023-EAB-0959).

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 the hearing referrals for claimant's late requests for hearing, claimant's response to the appellant questionnaire, and claimant's statement enclosed with their late applications for review. This evidence 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 November 13, 2020, the Department mailed decision # 143328 to claimant's address on file with the Department. Decision # 143328 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than December 3, 2020." Order No. 22-UI-204428, Exhibit 1 at 2.

(2) On August 30, 2021, the Department mailed decision # 112327 to claimant's address on file with the Department. Decision # 112327 stated, "If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before September 20, 2021 to be timely." Order No. 22-UI-204436, Exhibit 1 at 3.

(3) On November 23, 2021, the Department mailed decision # 0557429 to claimant's address on file with the Department. Decision # 0557429 stated, "You have the right to appeal this decision if you

¹ See EAB Exhibit 1 at 2. For purposes of this decision, claimant's May 23, 2023 letter will be referred to as her response to the appellant questionnaire.

believe it is wrong. Your request for appeal must be received no later than December 13, 2021.” Order No. 22-UI-204430, Exhibit 1 at 1.

(4) On April 15, 2022, the Department mailed decision # 125450 to claimant’s address on file with the Department. Decision # 125450 stated, “Any appeal from this decision must be filed on or before May 5, 2022 to be timely.” Order No. 22-UI-204429, Exhibit 1 at 2.

(5) Orders No. 22-UI-204428, 22-UI-204436, 22-UI-204430, and 22-UI-204429, mailed to claimant on October 6, 2022, each 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.” Orders No. 22-UI-204428, 22-UI-204436, 22-UI-204430, and 22-UI-204429 at 2. Orders No. 22-UI-204428, 22-UI-204436, 22-UI-204430, and 22-UI-204429 also each stated on their Certificates of Mailing, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than October 26, 2022.”

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 22-UI-204428, 22-UI-204436, 22-UI-204430, and 22-UI-204429 are allowed. Orders No. 22-UI-204428, 22-UI-204436, 22-UI-204430, and 22-UI-204429 are set aside and these matters remanded for hearings on whether claimant’s late requests for hearing on decisions # 143328, 112327, 0557429, and 125450 should be allowed and, if so, the merits of those decisions.

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 applications for review of Orders No. 22-UI-204428, 22-UI-204436, 22-UI-204430, and 22-UI-204429 were due by October 26, 2022. Because claimant did not file their applications for review until August 23, 2023, the applications for review were late.

On her statement enclosed with the applications for review, claimant explained that she “just received a letter dated June 5, 2023 dismissing [her] hearing request... and did not receive the written questionnaires apparently sent in October 2022.” EAB Exhibit 1 at 3. If claimant did not receive the appellant questionnaires mailed to her in October 2022, it is reasonable to conclude that she also did not receive the orders to which they were attached. As such, claimant failed to file timely applications for review on the orders under review due to circumstances beyond her reasonable control.

Further, it appears from claimant's statement that she first learned of the orders under review when she received the June 5, 2023 letters explaining that her appellant questionnaire responses would not be considered. Therefore, the circumstances which caused claimant to fail to file timely applications for review ended on the date on which she received those letters. Claimant did not indicate on what date she received those letters. Nevertheless, because she stated that she "just" received the letters on the date she wrote the statement, it can be inferred that she more likely than not received them the same day that she wrote the statement. Because claimant filed her late applications for review the same day, claimant filed the applications for review within the seven-day "reasonable time" period required under OAR 471-041-0070(2)(b). Claimant's late applications for review of Orders No. 22-UI-204428, 22-UI-204436, 22-UI-204430, and 22-UI-204429 therefore are allowed.

Late request 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.

The requests for hearing on decisions # 143328, 112327, 0557429, and 125450 were due by December 3, 2020, September 20, 2021, December 13, 2021, and May 5, 2022, respectively. Because claimant did not file her requests for hearing on these decisions until May 10, 2022, the requests were late.

On the appellant questionnaire response claimant, via her counsel, stated:

On April 11, 2023, [claimant] formally requested a late hearing using the OED Contact Us page. [Claimant] provided decision numbers and an explanation of good cause. On May 10, 2023, [claimant] received an email to her junk folder which she did not see until May 19, 2023 from OED denying her request for hearing[.] [Claimant] did not receive the aforementioned decisions and only learned of the decisions after undersigned counsel had requested the OED file and provided the information to [claimant] on April 10, 2023.

EAB Exhibit 1 at 2. If claimant never received or learned of the decisions at issue in these matters until her counsel provided her with a copy of her file from the Department, or at any time prior to the respective timely appeal deadlines for those decisions, claimant may have had good cause for failing to file timely requests for hearing. However, claimant's above statement is inconsistent with the record, which shows that claimant requested a hearing as early as May 10, 2022, rather than May 10, 2023. EAB Exhibit 1 at 1. It is not clear if one or more of the dates cited in claimant's statement are typographical errors, or if claimant filed late requests for hearing relating to these matters on more than one occasion.

On remand, the ALJ should inquire as to how and when claimant first received or became aware of each of the administrative decisions at issue in these matters. To the extent that claimant did not receive any or all of the decisions prior to their respective timely appeal deadlines, the ALJ should inquire as to whether claimant's address with the Department was correct at the time the decisions were mailed, whether claimant had any issue receiving mail at those times, and, if so, whether claimant was aware of

such issues and took steps to mitigate them. Further, in order to determine whether claimant filed the late requests for hearing within a reasonable time after the factors which prevented her timely filings ceased, the ALJ should inquire as to what prompted claimant to file her requests for hearing when she did.

Orders No. 22-UI-204428, 22-UI-204436, 22-UI-204430, and 22-UI-204429 therefore are reversed, and these matters remanded for hearings on whether claimant's late requests for hearing on decisions # 143328, 112327, 0557429, and 125450 should be allowed and, if so, the merits of those respective decisions.

DECISION: Orders No. 22-UI-204428, 22-UI-204436, 22-UI-204430, and 22-UI-204429 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: October 4, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-204428, 22-UI-204436, 22-UI-204430, and 22-UI-204429 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these matters 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

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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
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