

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1141

Late Applications for Review Allowed
Reversed & Remanded

PROCEDURAL HISTORY: On September 24, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to actively seek work for the weeks including August 1, 2021 through August 7, 2021 (week 31-21) and August 15, 2021 through August 21, 2021 (week 33-21) and therefore was ineligible for unemployment insurance benefits for those weeks and until the reason for denial ended (decision # 92100). On October 14, 2021, decision # 92100 became final without claimant having filed a request for hearing. On July 8, 2022, the Department served notice of an administrative decision, based in part on decision # 92100, concluding that claimant received \$1,110 in regular unemployment insurance (regular UI) benefits and \$600 in Federal Pandemic Unemployment Compensation (FPUC) benefits to which they were not entitled and must repay (decision # 105213). On July 28, 2022, decision # 105213 became final without claimant having filed a request for hearing. On September 22, 2022, claimant filed late requests for hearing on decisions # 92100 and 105213. ALJ Kangas considered claimant's requests, and on October 6, 2022 issued Orders No. 22-UI-204479 and 22-UI-204478, dismissing claimant's requests for hearing on decisions # 92100 and 105213, 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-204479 and 22-UI-204478 became final without claimant having filed a response to the appellant questionnaire or applications for review with the Employment Appeals Board (EAB). On October 9, 2023, claimant filed late applications for review of Orders No. 22-UI-204479 and 22-UI-204478 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-204479 and 22-UI-204478. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1141 and 2023-EAB-1140).

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 written statement claimant provided with their late applications for review, an email inquiry to the Office of Administrative Hearings (OAH) about the status of their hearings on decisions # 92100 and 105213. 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 September 24, 2021, the Department mailed decision # 92100 to claimant's address on file with the Department. Decision # 92100 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 October 14, 2021." Order No. 22-UI-204479, Exhibit 1 at 2.

(2) On July 8, 2022, the Department mailed decision # 105213 to claimant's address on file with the Department. Decision # 105213 stated, "you have the right to appeal this decision. Any appeal from this decision must be filed on or before July 28, 2022 to be timely." Order No. 22-UI-204478, Exhibit 1 at 2.

(3) Claimant was in a treatment center during periods of time in 2021 and 2022. *See* Order No. 22-UI-204479, Exhibit 2 at 2. By September 22, 2022, claimant was released from the treatment center. *See* Order No. 22-UI-204479, Exhibit 2 at 2.

(4) On September 22, 2022, claimant filed late requests for hearing on decisions # 92100 and 105213 by using a hearing request web form on the Department's website. When claimant did so, they provided an updated street address in Portland, Oregon and stated "Please note: my address is new, just moved." Order No. 22-UI-204479, Exhibit 2 at 2; Order No. 22-UI-204478, Exhibit 2 at 2.

(5) On October 6, 2022, ALJ Kangas issued Orders No. 22-UI-204479 and 22-UI-204478, dismissing claimant's requests for hearing on decisions # 92100 and 105213, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by October 20, 2022. However, the Office of Administrative Hearings (OAH) mailed Orders No. 22-UI-204479 and 22-UI-204478 to claimant's old address in Forest Grove, Oregon, not to claimant's updated address in Portland. Because the hearing orders were not mailed to claimant's updated address in Portland, claimant did not receive them. On October 26, 2022, Orders No. 22-UI-204479 and 22-UI-204478 became final without claimant having filed applications for review of Orders No. 22-UI-204479 and 22-UI-204478 with EAB.

(6) On October 9, 2023, claimant sent an email to OAH advising that they had not heard back regarding their requests for hearing and inquiring about the status of the hearings. EAB Exhibit 1 at 1. On October 10, 2023, OAH forwarded claimant's email to EAB, which EAB considered to be late applications for review of Orders No. 22-UI-204479 and 22-UI-204478 filed October 9, 2023. EAB Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Claimant's late applications for review of Orders No. 22-UI-204479 and 22-UI-204478 are allowed. Orders No. 22-UI-204479 and 22-UI-204478 are reversed, and the matters remanded for hearings on whether claimant's late requests for hearing on decisions # 92100 and 105213 should be allowed and, if so, the merits of those decisions.

Late Applications 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-204479 and 22-UI-204478 were due by October 26, 2022. Because claimant did not file their applications for review until October 9, 2023, the applications for review were late.

Claimant did not receive Orders No. 22-UI-204479 and 22-UI-204478 in the mail because the hearing orders were not mailed to claimant’s address in Portland, which claimant had updated with the Department in their requests for hearing two weeks before Orders No. 22-UI-204479 and 22-UI-204478 were issued. Because claimant did not receive the hearing orders, their non-receipt of the orders and lack of awareness of their right to appeal them were factors beyond claimant’s reasonable control that prevented a timely filing of the applications for review. These factors persisted through October 9, 2023, the date in which claimant sent their email inquiry to OAH asking about the status of their requests for hearing on decisions # 92100 and 105213. It is evident from the face of this email, which OAH forwarded to EAB and is being treated as late applications for review of Orders No. 22-UI-204479 and 22-UI-204478, that claimant had not received the hearing orders and was unaware of their existence. *See* EAB Exhibit 1 at 1 (“I have not heard back via email or mail with any info regarding a date for an appeal or its status. . . . Can you please look into the status of my appeal and why I may not have received any info yet?”).

Accordingly, claimant established good cause to extend the filing deadline of their applications for review to October 9, 2023, and filed within a reasonable time. The late applications for review of Orders No. 22-UI-204479 and 22-UI-204478 are therefore allowed.

Late Requests 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 deadline for claimant to file a timely request for hearing on decision # 92100 was October 14, 2021. The deadline for claimant to file a timely request for hearing on decision # 105213 was July 28, 2022. Claimant did not file their requests for hearing on decisions # 92100 and 105213 until September 22, 2022. Therefore, claimant’s requests for hearing were late.

Claimant was in a treatment center during periods of time in 2021 and 2022. By September 22, 2022, claimant was released from the treatment center. If claimant did not receive the administrative decisions because they were in a treatment center, or received or otherwise became aware of the decisions and the right to appeal them but was unable to do so because of their presence in the treatment center, claimant’s late requests for hearing may have been the result of factors beyond their reasonable control. However, further inquiry is needed to determine whether claimant had good cause to file the late requests for

hearing, and filed the late requests for hearing within a reasonable time. On remand, the ALJ should ask questions to determine whether claimant failed to receive decisions # 92100 and 105213 and, if so, to determine whether claimant's failure to receive the administrative decisions was due to a factor beyond claimant's reasonable control or an excusable mistake. The ALJ should also ask questions to determine when claimant learned of the existence of decisions # 92100 and 105213 and their right to appeal the decisions, whether the circumstances that prevented a timely filing (if any) ceased to exist at that point, or whether, perhaps due to claimant's presence in a treatment center, any such circumstances preventing a timely filing continued to persist despite claimant's knowledge of the decisions and the right to appeal them. The ALJ should also ask questions to determine whether claimant's September 22, 2022, requests for hearing were filed within seven-day "reasonable time" after any factors preventing a timely filing ceased to exist.

Orders No. 22-UI-204479 and 22-UI-204478 therefore are reversed, and the matter remanded for a hearing on whether claimant's late requests for hearing should be allowed and, if so, the merits of decisions # 92100 and 105213.

DECISION: Orders No. 22-UI-204479 and 22-UI-204478 are set aside, and the matters remanded for hearings on whether claimant's late requests for hearing on decisions # 92100 and 105213 should be allowed and, if so, the merits of those decisions.

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

DATE of Service: November 16, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-204479 and 22-UI-204478 or return either matter to EAB. Only a timely application for review of the subsequent respective order will cause the matter 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

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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