

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1145

Late Application for Review Dismissed

PROCEDURAL HISTORY: On May 31, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide information in accordance with the Department’s rules and therefore was ineligible to receive unemployment insurance benefits for the weeks of May 14, 2023, through May 27, 2023 (weeks 20-23 through 21-23) and until the reason for the denial had ended (decision # 130507). On June 20, 2023, decision # 130507 became final without claimant having filed a request for hearing. On June 27, 2023, claimant filed a late request for hearing on decision # 130507. ALJ Kangas considered claimant’s request, and on August 29, 2023, issued Order No. 23-UI-234531, dismissing claimant’s request for hearing as late, subject to claimant’s right to renew the request by responding to an appellant questionnaire by September 12, 2023. On September 18, 2023, Order No. 23-UI-234531 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On October 11, 2023, claimant filed a late response to the appellant questionnaire and a late application for review of Order No. 23-UI-234531 with 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 a statement enclosed with the application for review, claimant’s response to the appellant questionnaire, an email claimant sent to the Office of Administrative Hearings (OAH) on September 26, 2023, and a copy of the first page of claimant’s lease agreement, dated August 14, 2023.¹ 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.

FINDING OF FACT: (1) Order No. 23-UI-234531, mailed to claimant on August 29, 2023, stated, “You may appeal this decision by filing the attached form Application for Review with the Employment

¹ EAB did not consider the remainder of the lease agreement, which claimant also included with their application for review, when reaching this decision, because it was not relevant and material to EAB’s determination in this matter. See OAR 471-041-0090(1)(b)(A).

Appeals Board within 20 days of the date that this decision is mailed.” Order No. 23-UI-234531 at 2. Order No. 23-UI-234531 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 September 18, 2023.”

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 23-UI-234531 is 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 application for review of Order No. 23-UI-234531 was due by September 18, 2023. Because claimant did not file their application for review until October 11, 2023, the application for review was late. Claimant provided a written statement with the application for review, in the form of their response to the appellant questionnaire. On their response, claimant stated that they did not file their hearing request timely because they had moved to a new home, and their mail was being forwarded to a new address. EAB Exhibit 1 at 2. The lease agreement which claimant enclosed with the application for review indicates a move-in date of August 15, 2023. EAB Exhibit 1 at 3. However, decision # 130507 was mailed on May 31, 2023, more than two months before claimant apparently moved. Thus, it appears that claimant’s statement regarding having moved actually refers to their reason for filing the *application for review* late, and not the hearing request on decision # 130507.

Additionally, claimant’s email to OAH on September 26, 2023, was sent in response to an OAH email dated August 29, 2023 which advised claimant that the “direct review dismissal” (i.e., Order No. 23-UI-234531) would be mailed to claimant that day. EAB Exhibit 1 at 4. Claimant stated in that email that they had not received the order under review, and confirmed that their mailing address was the *previous* address the Department had on file for them. EAB Exhibit 1 at 4; Exhibit 1 at 1. There is no indication in claimant’s responses that they updated their address with OAH or the Department after they moved. Instead, claimant appeared to have relied on their mail being forwarded to their new address, even after they were notified that they should expect mail regarding their appeal. This shows that claimant’s failure to receive (or timely receive) the order under review was not due to circumstances beyond their reasonable control, as they had both knowledge of an impending mailing and the opportunity to update their address with OAH, but did not do so. Accordingly, claimant did not show good cause for the late application for review, and claimant’s late application for review is dismissed.

DECISION: The application for review filed October 11, 2023, is dismissed. Order No. 23-UI-234531 remains undisturbed.

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

DATE of Service: November 17, 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.

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

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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