

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1162

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On February 2, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective May 3, 2020 (decision # 141659). On February 22, 2021, decision # 141659 became final without claimant having filed a request for hearing. On March 28, 2022, the Department served notice of an administrative decision based in part on decision # 141659, concluding that claimant received \$1,208 in regular unemployment insurance (regular UI) and \$4,800 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay (decision # 91528). On April 18, 2022, decision # 91528 became final without claimant having filed a request for hearing. On May 20, 2022, the Department served notice of an administrative decision denying claimant's request for a waiver of the overpayment of FPUC benefits assessed in decision # 91528 (decision # 75053). On June 9, 2022, decision # 75053 became final without claimant having filed a request for hearing.

On June 15, 2022, claimant filed late requests for hearing on decisions # 141659, 91528, and 75053. ALJ Kangas considered claimant's requests, and on September 20, 2022 issued Orders No. 22-UI-203156, 22-UI-203154, and 22-UI-203155, dismissing the requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by October 4, 2022. On October 8, 2022, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 22-UI-203156, 22-UI-203154, and 22-UI-203155 with the Employment Appeals Board (EAB). On October 18, 2022, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding the matter because the questionnaire response was late.

EAB reviewed Orders No. 22-UI-203156, 22-UI-203154, and 22-UI-203155 based on claimant's October 8, 2022 applications for review. On December 13, 2022 issued EAB Decisions 2022-EAB-1139, 22-EAB-1180 and 22-EAB-1181, setting aside Orders No. 22-UI-203156, 22-UI-203154 and 22-UI-203155, and remanding the matters for a hearing on whether claimant's late requests for hearing

should be allowed and, if so, the merits of decisions # 141659, 91528, and 75053. On December 28, 2022, the Office of Administrative Hearings served notices of hearings scheduled for January 10, 2023 with ALJ Frank. On January 10, 2023, claimant failed to appear at the hearings, and the ALJ issued Orders No. 23-UI-212232, 23-UI-212235 and 23-UI-212233, dismissing claimant's requests for hearing due to her failure to appear, leaving decisions # 141659, 91528, and 75053 undisturbed. On January 30, 2023, Orders No. 23-UI-212232, 23-UI-212235 and 23-UI-212233 became final without claimant having filed requests to reopen the hearings. On February 11, 2023, claimant filed a late requests to reopen the hearings. ALJ Kangas considered the requests, and on August 24, 2023 issued Orders No. 23-UI-234218, 23-UI-234223 and 23-UI-234211, dismissing the requests as late without a showing of good cause, leaving Orders No. 23-UI-212232, 23-UI-212235 and 23-UI-212233 undisturbed.

On September 13, 2023, Orders No. 23-UI-234218, 23-UI-234223 and 23-UI-234211 became final without claimant having filed applications for review with the Employment Appeals Board (EAB). On October 17, 2023, claimant filed late applications for review of Orders No. 23-UI-234218, 23-UI-234223 and 23-UI-234211 with EAB. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-234218, 23-UI-234223 and 23-UI-234211. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2023-EAB-1164, 2023-EAB-1162, and 2023-EAB-1163).

FINDING OF FACT: (1) Orders No. 23-UI-234218, 23-UI-234223 and 23-UI-234211, mailed to claimant on August 24, 2023, 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. 23-UI-234218, 23-UI-234223 and 23-UI-234211 at 4. Orders No. 23-UI-234218, 23-UI-234223 and 23-UI-234211 also stated on their Certificates of Mailing, "Any appeal from this Order must be filed on or before September 13, 2023 to be timely."

CONCLUSIONS AND REASONS: Claimant's late applications for review of Orders No. 23-UI-234218, 23-UI-234223 and 23-UI-234211 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. 23-UI-234218, 23-UI-234223 and 23-UI-234211 were due September 13, 2023. Because claimant did not file her application for review until October 17, 2023, the applications for review were late. Claimant's applications for review did not include a written statement describing the circumstances that prevented claimant from filing the applications for review by the

September 13, 2023 deadline. Accordingly, claimant did not show good cause for the late application for review, and claimant's late application for review is dismissed.

DECISION: The applications for review filed October 17, 2023 are dismissed. Orders No. 23-UI-234218, 23-UI-234223 and 23-UI-234211 remain undisturbed.

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

DATE of Service: November 2, 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.

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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