

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1220

Order No. 23-UI-229943 Affirmed ~ Late Request for Hearing Denied
Order No. 23-UI-87567 ~ Late Application for Review Dismissed

PROCEDURAL HISTORY: On November 10, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work for the week of October 30, 2022, through November 5, 2022 (week 44-22) and was therefore ineligible for unemployment insurance benefits for that week (decision # 133942). On November 28, 2022, the Department served notice of an administrative decision concluding that claimant had failed to provide information to the Department and was therefore ineligible for unemployment insurance benefits for week 44-22 and until the reasons for the denial ended (decision # 611802). On November 30, 2022, decision # 133942 became final without claimant having filed a request for hearing. On December 19, 2022, decision # 611802 became final without claimant having filed a request for hearing. On February 24, 2023, claimant filed a late request for hearing on decision # 611802. On March 8, 2023, claimant filed a late request for hearing on decision # 133942.

ALJ Kangas considered claimant's requests. On April 12, 2023, ALJ Kangas issued Order No. 23-UI-221886, dismissing claimant's request for hearing on decision # 611802 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 26, 2023. On May 2, 2023, Order No. 23-UI-221886 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On July 10, 2023, ALJ Kangas issued Order No. 23-UI-229943, dismissing claimant's request for hearing on decision # 133942 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 24, 2023. On July 25, 2023, claimant filed a late response to the appellant questionnaire, and an application for review with EAB which was late as to Order No. 23-UI-221886 and timely as to Order No. 23-UI-229943. On October 29, 2023, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue additional orders regarding these matters because the questionnaire response was late. These matters come before EAB based upon claimant's July 25, 2023, application for review of Orders No. 23-UI-229943 and 23-UI-221886.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-229943 and 23-UI-221886. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1220 and 2023-EAB-1219).

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 July 25, 2023, response to the appellant questionnaire, 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.

FINDINGS OF FACT: (1) On November 10, 2022, the Department mailed decision # 133942 to claimant’s address on file with the Department. Decision # 133942 stated, “Any appeal from this decision must be filed on or before November 30, 2022, to be timely.” Order No. 23-UI-229943, Exhibit 1 at 2.

(2) Order No. 23-UI-221886, mailed to claimant on April 12, 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.” Order No. 23-UI-221886 at 2. Order No. 23-UI-221886 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 May 2, 2023.”

CONCLUSIONS AND REASONS: Order No. 23-UI-229943 is affirmed. Claimant’s late request for hearing on decision # 133942 is dismissed. Claimant’s late application for review of Order No. 23-UI-221886 is dismissed.

Order No. 23-UI-229943 - 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 request for hearing on decision # 133942 was due by November 30, 2022. Because claimant did not file their request for hearing until March 8, 2023, the request was late. On their appellant questionnaire response, claimant stated that they received the administrative decision on November 14, 2022, and filed the request for hearing on March 8, 2023. EAB Exhibit 1 at 1. Although claimant did not indicate which of the two administrative decisions they were referring to in their response, it is reasonable to infer that they were referring to decision # 133942, as they filed the request for hearing on that decision on March 8, 2023, and as decision # 611802 had not yet been issued on November 14, 2022.

Claimant explained that they filed the request for hearing late “due to trying to fix the denial with [the] WorkSource ID.me issue.” EAB Exhibit 1 at 1. Claimant appears to be referring here to the merits of decision # 611802, which denied claimant benefits on the basis that they had failed to provide information to the Department which was necessary to verify their identity. Claimant also suggested on

their appellant questionnaire response that they were misinformed about the documents they needed to provide regarding their apprenticeship training program, which formed the basis of the denial under decision # 133942. EAB Exhibit 1 at 2. Claimant did not offer further information to explain why either of these concerns caused them to miss the timely filing deadline for decision # 133942.

To the extent that claimant attempted to remedy the concerns that led to the issuance of decision # 133942 in lieu of filing a timely request for hearing on that decision, claimant's failure to file a timely request for hearing was likely a mistake. However, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Therefore, claimant's late request for hearing on decision # 133942 must be dismissed under ORS 657.875 and OAR 471-040-0010.

Order No. 23-UI-221886 – 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 application for review of Order No. 23-UI-221886 was due by May 2, 2023. Because claimant did not file their application for review until July 25, 2023, the application for review was late. Claimant provided a written statement with the application for review, by way of their response to the appellant questionnaire. However, claimant's written statement did not describe the circumstances that prevented them from filing the application for review on time. Accordingly, claimant did not show good cause for the late application for review, and claimant's late application for review is dismissed.

DECISION: Order No. 23-UI-229943 is affirmed. Claimant's late request for hearing on decision # 133942 is dismissed. The application for review filed July 25, 2023, is dismissed. Order No. 23-UI-221886 remains undisturbed.

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

DATE of Service: November 9, 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

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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.

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