

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1264

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On May 4, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA benefits effective December 27, 2020. On May 24, 2021, the May 4, 2021, PUA determination became final without claimant having filed a request for hearing. On September 28, 2022, the Department served notice of an administrative decision, based in part on the May 4, 2021, PUA determination, concluding that claimant was liable for an overpayment of \$3,280 in PUA benefits and \$4,800 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay the Department (decision # 174015). On October 18, 2022, decision # 174015 became final without claimant having filed a request for hearing. On February 14, 2023, claimant filed late requests for hearing on the May 4, 2021, PUA determination and decision # 174015.

ALJ Kangas considered claimant's requests, and on May 24, 2023, issued Orders No. 23-UI-225911 and 23-UI-225907, respectively dismissing claimant's requests for hearing on the May 4, 2021 PUA determination and decision # 174015 as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by June 7, 2023. On June 13, 2023, Orders No. 23-UI-225911 and 23-UI-225907 became final without claimant having filed an appellant questionnaire response or applications for review with the Employment Appeals Board (EAB). On July 31, 2023, claimant filed a late appellant questionnaire response and late applications for review of Orders No. 23-UI-225911 and 23-UI-225907 with EAB. On November 28, 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 late applications for review of Orders No. 23-UI-225911 and 23-UI-225907.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-225911 and 23-UI-225907. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1265 and 2023-EAB-1254).

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 included

with claimant's late applications for review, which is claimant's appellant questionnaire response, 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) Order No. 23-UI-225911, mailed to claimant on May 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." Order No. 23-UI-225911 at 2. Order No. 23-UI-225911 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 June 13, 2023."

(2) Order No. 23-UI-225907, mailed to claimant on May 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." Order No. 23-UI-225907 at 2. Order No. 23-UI-225907 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 June 13, 2023."

(3) On July 31, 2023, claimant filed late applications for review of Orders No. 23-UI-225911 and No. 23-UI-225907.

CONCLUSIONS AND REASONS: Claimant's late applications for review of Orders No. 23-UI-225911 and 23-UI-225907 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 application for review of Order No. 23-UI-225911 was due by June 13, 2023. Because claimant did not file their application for review until July 31, 2023, the application for review was late. The application for review of Order No. 23-UI-225907 was due by June 13, 2023. Because claimant did not file their application for review until July 31, 2023, the application for review was late. Claimant provided a written statement with the applications for review. However, claimant's written statement did not describe circumstances preventing them from filing the applications for review on time. Accordingly, claimant did not show good cause for the late applications for review, and claimant's late applications for review are dismissed.

DECISION: The applications for review filed July 31, 2023, are dismissed. Orders No. 23-UI-225911 and 23-UI-225907 remain undisturbed.

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

DATE of Service: December 1, 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.

NOTE: The Department may defer recovery or completely waive the overpaid amount if certain standards are met. To make a request for Waiver of Overpayment Recovery, call 503-947-1995 or email OED_Overpayment_unit@employ.oregon.gov . You must submit waiver applications that correspond to the program for which you were overpaid benefits. **If you were overpaid benefits under both state and federal benefits programs, you will need to file two separate waiver applications.** To access a State UI Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “State UI Overpayment Waiver”. To access a Federal Program Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “Federal Program Overpayment Waiver”.

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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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