

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1336

Late Application for Review Allowed
Reversed & Remanded

PROCEDURAL HISTORY: On May 25, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective August 14, 2022 (decision # 81028). On June 14, 2023, decision # 81028 became final without claimant having filed a request for hearing. On August 18, 2023, claimant filed a late request for hearing on decision # 81028.

ALJ Kangas considered claimant's request, and on November 9, 2023, issued Order No. 23-UI-240791, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 23, 2023. On November 29, 2023, Order No. 23-UI-240791 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On December 18, 2023, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 23-UI-240791 with the Employment Appeals Board (EAB). On December 20, 2023, 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 this matter because the questionnaire response was late. This matter comes before EAB based upon claimant's December 18, 2023, application for review of Order No. 23-UI-240791.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's response to the appellant questionnaire, 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 May 25, 2023, the Department mailed decision # 80128 to claimant's address on file with the Department. Decision # 81028 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 June 14, 2023.” Exhibit 1 at 2.

(2) On August 18, 2023, claimant contacted the Department via their online contact form. In response to claimant’s inquiry, a Department representative entered the following comment into claimant’s claim:

NO ZD TIKKET, CLMT INQ ON ISSUE ON CLM. ADV OF VQ DENIAL. ADV ISSUED BACK IN 5/25/23 ADV WOULD NEED TO APPEAL. CU FORM SUBMITTED¹

(3) Order No. 23-UI-240791, mailed to claimant on November 9, 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-240791 at 2. Order No. 23-UI-240791 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 November 29, 2023.”

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 23-UI-240791 is allowed. Order No. 23-UI-240791 is set aside and this matter remanded for a hearing on whether claimant’s late request for hearing on decision # 81028 should be allowed and, if so, the merits of that decision.

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-240791 was due by November 29, 2023. Because claimant did not file their application for review until December 18, 2023, the application for review was late.

On their appellant questionnaire response, enclosed with the application for review, claimant stated that they received the “administrative decision” on December 14, 2023. EAB Exhibit 1 at 1. Claimant responded to the question asking why they did not file their request for hearing on time by explaining, “I just got this notice in the mail[.] I’ve been dealing with mail fraud and Social Security fraud[.]” EAB Exhibit 1 at 2. The former question was referring to decision # 81028, which was mailed on May 25, 2023. As claimant filed the request for hearing on that decision in August 2023, several months before the date on which they reported having received the decision itself, it appears that claimant instead answered the question as in regard to when they received *Order No. 23-UI-240791*. Further, claimant’s

¹ EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

statement that they had been “dealing with mail fraud” suggests that the delayed receipt of the order under review was due to a third person tampering with their mail. Thus, claimant filed the late application for review due to factors or circumstances beyond their reasonable control. Those factors or circumstances ceased when they received the order under review. Claimant filed the application for review on December 18, 2023, which was less than seven days after the factors or circumstances which prevented their timely filing ceased. As such, claimant filed the application for review within a reasonable time, and their late application for review is allowed.

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 # 81028 was due by June 14, 2023. Because claimant did not file their request for hearing until August 18, 2023, the request was late. The Department’s records show that claimant contacted the Department that day and that claimant was advised that they had been disqualified from benefits due to the voluntary quit decision issued on May 25, 2023. Further, claimant’s statement on their appellant questionnaire response, above, indicated that they experienced issues with mail delivery, at least later in 2023. When read together, these two facts suggest that claimant may not have timely received decision # 81028. However, further information is needed to determine whether claimant had good cause for filing the late request for hearing and, if so, whether they did so within a reasonable time after the factors which prevented their timely filing ceased. On remand, the ALJ should inquire as to when claimant first received or otherwise learned about the existence of decision # 81028 and their right to appeal the administrative decision, any factors which may have prevented their timely filing of the request for hearing, when those factors ceased, and what prompted claimant to file the request for hearing when they did.

Order No. 23-UI-240791 therefore is reversed, and this matter remanded for a hearing on whether claimant’s late request for hearing should be allowed and, if so, the merits of decision # 81028.

DECISION: The late application for review filed December 18, 2023, is allowed. Order No. 23-UI-240791 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: January 22, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-240791 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.