

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0004

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On December 28, 2022, the Oregon Employment Department (the Department) served notice of four administrative decisions concluding that claimant filed late claims for benefits for the weeks from January 24 through March 20, 2021 (weeks 04-21 through 11-21), March 21 through May 15, 2021 (weeks 12-21 through 19-21), May 16 through July 17, 2021 (weeks 20-21 through 28-21), and July 18 through September 4, 2021 (weeks 29-21 through 35-21), and was denied benefits for those weeks (decisions # 115226, 115716, 120544, and 121538, respectively). On January 17, 2023, decisions # 115226, 115716, 120544, and 121538 became final without claimant having filed requests for hearing.

On February 9, 2023, claimant filed late requests for hearing on decisions # 115226, 115716, 120544, and 121538. ALJ Kangas considered claimant's requests, and on June 28, 2023, issued Orders No. 23-UI-229006, 23-UI-229002, 23-UI-229007, and 23-UI-229003, dismissing claimant's requests for hearing on decisions # 115226, 115716, 120544, and 121538 as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by July 12, 2023. On July 18, 2023, Orders No. 23-UI-229006, 23-UI-229002, 23-UI-229007, and 23-UI-229003 became final without claimant having filed a response to the appellant questionnaire or applications for review with the Employment Appeals Board (EAB). On October 17, 2023, claimant filed a late response to the appellant questionnaire and late applications for review of Orders No. 23-UI-229006, 23-UI-229002, 23-UI-229007, and 23-UI-229003 with EAB. On December 28, 2023, ALJ Kangas mailed a letter to claimant stating that because the appellant questionnaire response was late, it would not be considered and no new orders would be issued regarding these matters.

These matters come before EAB based on claimant's October 17, 2023, late applications for review of Orders No. 23-UI-229006, 23-UI-229002, 23-UI-229007, and 23-UI-229003. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-229006, 23-UI-229002, 23-UI-229007, and 23-UI-229003. For case-tracking purposes, this decision is being issued in quadruplicate (EAB Decisions 2024-EAB-0005, 2024-EAB-0007, 2024-EAB-0004, and 2024-EAB-0006, respectively).

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 and the statement accompanying their late applications for review, 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-229006, mailed to claimant on June 28, 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-229006 at 2. Order No. 23-UI-229006 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 July 18, 2023.”

(2) Order No. 23-UI-229002, mailed to claimant on June 28, 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-229002 at 2. Order No. 23-UI-229002 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 July 18, 2023.”

(3) Order No. 23-UI-229007, mailed to claimant on June 28, 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-229007 at 2. Order No. 23-UI-229007 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 July 18, 2023.”

(4) Order No. 23-UI-229003, mailed to claimant on June 28, 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-229003 at 2. Order No. 23-UI-229003 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 July 18, 2023.”

(5) On June 22, 2023, claimant suffered a “heat stroke,” and on August 10, 2023, was excused by their medical provider from working from June 22 through July 20, 2023, for that reason. EAB Exhibit 1 at 2, 13.

(6) Claimant received Orders No. 23-UI-229006, 23-UI-229002, 23-UI-229007, and 23-UI-229003 shortly after they were mailed.

CONCLUSIONS AND REASONS: Claimant’s late applications for review 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-229006, 23-UI-229002, 23-UI-229007, and 23-UI-229003 were due by July 18, 2023. Because claimant filed their applications for review of those orders on October 17, 2023, the applications for review were late.

Claimant included a written statement with their applications for review that explained why they were not timely filed. Claimant wrote, “I have been dealing with high blood pressure and accrued [*sic*] a heat stroke June 22, 2023.” EAB Exhibit 1 at 2. Claimant also included a note from their medical provider, dated August 10, 2023, which stated that claimant was to be excused from work from June 22 through July 20, 2023 “due to a health concern.” EAB Exhibit 1 at 13. This suggests that claimant’s medical condition was such that they may not have been able to file applications for review by July 18, 2023, which would be a circumstance beyond their reasonable control, and therefore would establish good cause to extend the filing deadline. According to claimant’s medical provider, however, claimant was able to return to work beginning July 21, 2023. It is therefore reasonable to infer that the circumstance that may have prevented timely filing ceased on that date, as claimant’s health had improved.

The record does not show that any factors or circumstances delayed claimant’s filing of applications for review beyond July 21, 2023. Because the applications for review were filed on October 17, 2023, more than seven days after the circumstances that may have prevented timely filing ceased, they were not filed within a “reasonable time.” Accordingly, claimant’s late applications for review of Orders No. 23-UI-229006, 23-UI-229002, 23-UI-229007, and 23-UI-229003 are dismissed.

DECISION: The applications for review of Orders No. 23-UI-229006, 23-UI-229002, 23-UI-229007, and 23-UI-229003 are dismissed. Orders No. 23-UI-229006, 23-UI-229002, 23-UI-229007, and 23-UI-229003 remain undisturbed.

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

DATE of Service: January 3, 2024

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
www.Oregon.gov/Employ/eab

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