

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0036

Late Application for Review Allowed
Order No. 23-UI-242615 Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On July 8, 2022, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was ineligible for PUA benefits effective March 1, 2020. Claimant filed a timely request for hearing. On August 1, 2022, notice was mailed to claimant of a hearing scheduled for August 15, 2022. On August 15, 2022, ALJ Scott convened a hearing at which claimant filed to appear and issued Order No. 22-UI-200534, dismissing claimant's request for hearing due to his failure to appear. On August 30, 2022, claimant filed a timely request to reopen the August 15, 2022 hearing. On October 24 and November 27, 2023, ALJ Frank conducted a hearing, and on December 5, 2023 issued Order No. 23-UI-242615, denying claimant's request to reopen the August 15, 2022 hearing, leaving Order No. 22-UI-200534 undisturbed. On December 26, 2023, Order No. 23-UI-242615 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On December 29, 2023, claimant filed a late application for review of Order No. 23-UI-242615 with EAB.

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 late application for review of Order No. 23-UI-242615 and written statement describing why it was filed late, 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.

WRITTEN ARGUMENT: EAB considered claimant's argument in reaching this decision.

FINDINGS OF FACT: (1) On August 1, 2022, the Office of Administrative Hearings mailed a Notice of Hearing to claimant stating that a hearing had been scheduled for August 15, 2022 at 1:30 p.m. Claimant did not receive the notice in the mail until August 16, 2022 and did not appear at the hearing for this reason.

(2) Order No. 23-UI-242615, mailed to claimant on December 5, 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-242615 at 4. Order No. 23-UI-242615 also stated on its Certificate of Mailing, “Any appeal from this order must be filed on or before December 26, 2023 to be timely.”

(3) Claimant did not receive Order No. 23-UI-242615 until December 29, 2023 because he was working in another state until that date.

CONCLUSIONS AND REASONS: Claimant’s late application for review is allowed. Claimant’s request to reopen is allowed, and he is entitled to a hearing on the merits of the July 8, 2022 PUA determination.

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-242615 was due by December 26, 2023. Because claimant did not file his application for review until December 29, 2023, the application for review was late. Claimant provided a written statement with the application for review. In it, claimant wrote that his application for review was late because he was working in another state “for over 6 weeks” and returned home to find Order No. 23-UI-242615 on December 29, 2023. EAB Exhibit 1 at 1. As it would have been impractical for claimant to provide a temporary address to the Office of Administrative Hearings (OAH) given the relatively short period during which he would be absent and the uncertainty over precisely when the hearing order would be issued, his failure to receive Order No. 23-UI-242615 prior to the filing deadline constituted a factor beyond claimant’s reasonable control. Claimant therefore has shown good cause to extend the filing deadline. Further, because claimant filed his application for review on December 29, 2023, the same day on which the factor that prevented the timely filing ceased, he filed it within a “reasonable time.” Accordingly, claimant’s late application for review is allowed.

Request to reopen. ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. “Good cause” exists when the requesting party’s failure to appear at the hearing arose from an excusable mistake or from factors beyond the party’s reasonable control. OAR 471-040-0040(2) (February 10, 2012). The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

Claimant filed a request to reopen the August 15, 2022 hearing on August 30, 2022, and included a statement explaining why he failed to appear at the hearing. Exhibit 4 at 1. His request was therefore timely and met the requirements for consideration under OAR 471-040-0040(3).

The order under review concluded that claimant failed to demonstrate that either an excusable mistake or circumstances beyond his reasonable control prevented him from appearing at the August 15, 2022 hearing. Order No. 23-UI-242615 at 4. The record does not support this conclusion.

Claimant testified he did not appear at the August 15, 2022 hearing because he did not receive the Notice of Hearing, mailed to him on August 1, 2022, until August 16, 2022. November 27, 2023 Audio Record at 9:00. Claimant did not know why delivery of the notice was delayed, but testified he had experienced difficulties receiving mail in the past, and had checked the mail on August 15, 2022. November 27, 2023 Audio Record at 12:53. The Department suggested that even if claimant did not receive the Notice of Hearing in the mail prior to the hearing date, he had actual notice of the hearing because he acknowledged in an email which appeared to have been sent the morning of the hearing that he had received a packet of proposed exhibits including a copy of the notice which had been sent to claimant by the Department via email. November 27, 2023 Audio Record at 18:18. Claimant denied that he received the Department's email or responded to it prior to the hearing, testifying that he received and responded to the email in the evening after the hearing was held. November 27, 2023 Audio Record at 20:25.

ORS 471-040-0015(1) (August 1, 2004) requires service of a hearing notice by personal delivery or mailing. Thus, regardless of when claimant received the packet of proposed exhibits, the Department's emailed copy of the notice was insufficient under the rules to establish that claimant had notice of the hearing. The record therefore shows that claimant did not have notice of the August 15, 2022 hearing as required by ORS 471-040-0015(1) prior to the time of the hearing due to a circumstance beyond his reasonable control, and that this caused his failure to appear at the hearing. Accordingly, claimant has shown good cause to reopen the August 15, 2022 hearing, and a hearing on the merits of the July 8, 2022 PUA determination is required.

DECISION: Order No. 23-UI-242615 is set aside, as outlined above.

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

DATE of Service: February 5, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-242615 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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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