

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0075

*Late Application for Review Allowed
Reversed & Remanded*

PROCEDURAL HISTORY: On October 5, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective July 2, 2023 (decision # 124617). On October 25, 2023, decision # 124617 became final without claimant having filed a request for hearing. On December 14, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on December 27, 2023, issued Order No. 23-UI-244205, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 10, 2024. On January 16, 2024, Order No. 23-UI-244205 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On January 17, 2023, claimant filed a late response to the appellant questionnaire and a late application for review of Order No. 23-UI-244205 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 application for review and attached 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.

WRITTEN ARGUMENT: EAB did not consider the written argument claimant submitted on February 13, 2024, when reaching this decision because claimant did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

The parties may offer new information, such as the information contained within claimant's written argument, into evidence at the remand hearing. At that time, it will be determined if the information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing

regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) On October 5, 2023, the Department mailed decision # 124617 to claimant's address on file with the Department. Decision # 124617 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 October 25, 2023." Exhibit 1 at 2.

(2) On December 14, 2023, claimant filed their request for hearing via the Department's online contact form.

(3) Order No. 23-UI-244205, mailed to claimant on December 27, 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-244205 at 2. Order No. 23-UI-244205 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 January 16, 2024."

(4) On January 17, 2024, claimant filed their application for review by fax.

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 23-UI-244205 is allowed. Order No. 23-UI-244205 is set aside, and this matter remanded for a hearing on whether claimant's late request late request for hearing on decision # 124617 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-244205 was due by January 16, 2024. Because claimant did not file their application for review until January 17, 2024, the application for review was late.

In their appellant questionnaire response, faxed on January 17, 2024, claimant stated that they "never received this letter." EAB Exhibit 1 at 2. Although claimant did not specify what they meant by "this letter," it is presumed that they meant the order under review, as the appellant questionnaire was submitted with that document. Claimant further explained, "I called & was told another one would be mailed to me & that I would receive it this Friday. THEN, yesterday it was in my mailbox with a note 'sorry I didn't drop this off at PO sooner.' I was out of town for the holidays. It went to the wrong mailbox. It happens occasionally at my PO." EAB Exhibit 1 at 2 (emphasis in original). Claimant also noted at the bottom of the page, "No fax office open last night." EAB Exhibit 1 at 2.

Claimant's statements show that they likely did not receive the order under review until January 16, 2024, which was the deadline for filing a timely application for review. Their statements further suggest that they were unable to fax in the application for review and appellant questionnaire response that same day because they did not have access to a fax machine until the following day. This constituted factors or circumstances beyond claimant's reasonable control, which did not cease until they both had the order under review in hand and could fax the order to EAB the following day. As they submitted their application for review on the same day as those factors or circumstances ceased, they filed the application for review within a "reasonable time." Claimant's late application for review therefore 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 was due by October 25, 2023. Because claimant did not file their request for hearing until December 14, 2023, the request was late.

In their appellant questionnaire response, claimant stated that they believed they had good cause to file the late request for hearing, explaining "I can't file it if I don't have the paperwork[.] If I had it, I would not have called so many times[.]" EAB Exhibit 1 at 2. Additionally, claimant stated that they did not know when they received decision # 124617, but that they "called and was told that by phone[.]" EAB Exhibit 1 at 3. Claimant also stated that they filed their request for hearing three times: the first two times by phone, and the third online.

Claimant's above statements suggest that they may not have received decision # 124617, and that, even if they did, that they may have contacted the Department in an attempt to file requests for hearing on two occasions prior to December 14, 2023. If claimant did not receive decision # 124617, they may have failed to file timely requests for hearing due to factors beyond their reasonable control. Further, it is possible that claimant may have filed, or attempted to file, a timely request for hearing before ultimately filing their late request on December 14, 2023. However, further development of the record is necessary to determine whether claimant's request for hearing should be allowed.

On remand, the ALJ should inquire as to when claimant initially contacted the Department about decision # 124617 in an attempt to file a request for hearing, and what factors, if any, prevented them from successfully filing those requests. The ALJ should also inquire as to when, if at all, claimant received decision # 124617. To the extent that claimant did not receive decision # 124617 promptly or at all, the record should be developed to show what factors, if any, caused claimant to receive the decision late, or to fail to receive the decision. Finally, the ALJ should inquire as to what caused claimant to file the December 14, 2023, request for hearing on that date, and ask questions to determine if claimant filed the late request for hearing within a reasonable time.

Order No. 23-UI-244205 therefore is set aside, 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 # 124617.

DECISION: Order No. 23-UI-244205 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: February 21, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-244205 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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