

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0140

*Application for Review Timely
Reversed & Remanded*

PROCEDURAL HISTORY: On November 3, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective August 27, 2023 (decision # 145045). On November 23, 2023, decision # 145045 became final without claimant having filed a request for hearing. On December 6, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on December 19, 2023, issued Order No. 23-UI-243781, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 2, 2024. On December 22, 2023, claimant filed a timely response to the appellant questionnaire and a timely application for review with the Employment Appeals Board (EAB).¹ On February 12, 2024, ALJ Kangas mailed a letter to claimant stating that the Office of Administrative Hearings (OAH) considered the appellant questionnaire response to have been filed January 29, 2024, and therefore it would not be considered and another order would not be issued regarding the matter. This matter comes before EAB based upon claimant's December 22, 2023, application for review.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's appellant questionnaire response and application for review with supporting documents, 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.

¹ As explained in greater detail below, though claimant sent these documents by fax on December 22, 2023, only a hard copy of the faxed documents, mailed by claimant January 29, 2024, was received by OAH and EAB.

FINDINGS OF FACT: (1) Decision # 145045, mailed to claimant’s address of record on November 3, 2023, 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 November 23, 2023.” Exhibit 1 at 2.

(2) Order No. 23-UI-243781, mailed to claimant’s address of record on December 19, 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-243781 at 2. Order No. 23-UI-243781 also stated on its Certificate of Service, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than January 8, 2024.”

(3) On December 22, 2023, claimant faxed a response to the appellant questionnaire and an application for review of Order No. 23-UI-243781 to OAH. OAH did not receive this fax.

(4) On January 26, 2024, claimant again faxed to OAH a copy of their previously faxed appellant questionnaire response and application for review of Order No. 23-UI-243781. OAH did not receive this fax.

(5) On January 29, 2024, claimant mailed a copy of the documents that were faxed on December 22, 2023, and January 26, 2024, to OAH. OAH received the mailed documents.

CONCLUSIONS AND REASONS: Claimant’s application for review was timely filed. Order No. 23-UI-243781 is set aside and the matter remanded for a hearing to determine whether claimant’s late request for hearing should be allowed and, if so, the merits of decision # 145045.

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).

OAR 471-041-0065 (May 13, 2019) provides, in relevant part:

(1) Filing dates shall be determined as follows:

* * *

(b) If mailed, the filing date is the date that the document is deposited in the United States mail in an envelope with first class postage, as evidenced by the postmark affixed to the envelope by the United States Postal Service.

* * *

(d) If faxed, the filing date is the encoded date on the faxed document.

* * *

(2) Where the information specified in section (1) of this rule is missing, unclear, or improbable the filing date is the date that EAB determines to be the most probable date of filing.

To be timely, the application for review of Order No. 23-UI-243781 must have been filed by January 8, 2024. The record shows that claimant first filed their appellant questionnaire response and application for review by faxing them to the Department on December 22, 2023. Claimant provided a fax confirmation with their application for review showing that on December 22, 2023, they faxed a four-page document to OAH, the first page of which was the Certificate of Service from Order No. 23-UI-243781. EAB Exhibit 1 at 7. Based on the documents later mailed to OAH, two of which were signed and dated by claimant “12/22/23,” it can reasonably be inferred that the other three pages of the fax consisted of the two documents bearing that date—claimant’s two-page appellant questionnaire response and one-page application for review. EAB Exhibit 1 at 3-5. While no date is “encoded” on the documents themselves, the date printed on the fax confirmation, December 22, 2023, is sufficient evidence to establish when the documents were sent. To the extent uncertainty about the filing date might exist because an encoded date is missing from the faxed documents themselves, the record shows that December 22, 2023, is the “most probable date of filing,” and is therefore the filing date pursuant to OAR 471-041-0065(2). Accordingly, claimant’s application for review was timely filed.

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 # 145045 was due November 23, 2023. Because claimant’s request for hearing was filed December 6, 2023, it was filed late. Claimant wrote in their appellant questionnaire response that they received decision # 145045 on “11/03/23.” EAB Exhibit 1 at 3. Claimant also wrote that they filed a request for hearing by fax, and that they “think” they did so on “11/09/23.” EAB Exhibit 1 at 3. While claimant did not provide a fax confirmation or other documentary evidence of sending this fax, the fact that claimant twice faxed documents regarding their appeal that were not received, on December 22, 2023, and January 26, 2024, tends to support claimant’s contention that they faxed a request for hearing to OAH on November 9, 2023 and it was not received. Further development of the record is needed to determine whether claimant filed a request for hearing on November 9, 2023, or whether factors or circumstances beyond claimant’s reasonable control, such as OAH failing to receive a fax, prevented timely filing.

On remand, inquiry should be made to determine whether claimant filed or attempted to file a request for hearing prior to the November 23, 2023, deadline, and if one was sent but not received or considered filed by OAH, and whether this constituted a factor beyond claimant’s reasonable control that prevented timely filing. If good cause is found to extend the deadline for timely filing, further inquiry should be made to determine when the factors that prevented timely filing ceased, and whether claimant filed their request for hearing within a “reasonable time” thereafter.

For these reasons, Order No. 23-UI-243781 is reversed and the matter remanded for a hearing to determine whether claimant’s late request for hearing should be allowed and, if so, the merits of decision # 145045.

DECISION: Order No. 23-UI-243781 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: February 29, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-243781 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 الاستئناف 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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