

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0170

Late Application for Review Allowed
Order No. 24-UI-244926 Affirmed – Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On May 20, 2022, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible to receive PUA benefits effective December 27, 2020. On June 9, 2022, the May 20, 2022, PUA determination became final without claimant having filed a request for hearing. On May 28, 2023, claimant filed a late request for hearing on the May 20, 2022, PUA determination. ALJ Kangas considered claimant’s request, and on January 8, 2024, issued Order No. 24-UI-244926, 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 22, 2024. On January 29, 2024, Order No. 24-UI-244926 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On January 30, 2024, claimant filed a late response to the appellant questionnaire. On February 6, 2024, 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. On February 13, 2024, claimant filed a late application for review of Order No. 24-UI-244926 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 consists of claimant’s statement enclosed with the late application for review and claimant’s response to the appellant questionnaire, 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) On May 20, 2022, the Department mailed the May 20, 2022, PUA determination to claimant’s address on file with the Department. The May 20, 2022, PUA determination stated, “You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by June 9, 2022.” Exhibit 1 at 2.

(2) The May 20, 2022, PUA determination denied claimant PUA benefits on the basis of their having “failed to provide acceptable proof of [their] employment or self-employment within the required period.” Exhibit 1 at 1.

(3) Order No. 24-UI-244926, mailed to claimant on January 8, 2024, 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. 24-UI-244926 at 2. Order No. 24-UI-244926 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 29, 2024.”

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 24-UI-244926 is allowed. Order No. 24-UI-244926 is affirmed, and claimant’s late request for hearing on the May 20, 2022, PUA determination is dismissed.

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. 24-UI-244926 was due by January 29, 2024. Because claimant did not file their application for review until February 13, 2024, the application for review was late.

On their statement enclosed with the application for review, claimant explained that they had been suffering from post-traumatic stress disorder (PTSD) and related conditions such as anxiety, due to “running from domestic violence for the last 4 years.” EAB Exhibit 1 at 1. Claimant further explained that, as a result of these conditions, they were on “heavy anxiety medication,” were “too scared to even open [their] curtains or take the garbage out,” and regularly suffered from lapses in memory. EAB Exhibit 1 at 1.

Claimant’s mental health difficulties suggest that they were unable to file an application for review by the timely filing deadline due to factors or circumstances beyond their reasonable control. Based on claimant’s statements, it is reasonable to conclude that those factors ceased once claimant was finally able to file their application for review on February 13, 2024. As claimant filed the application for review on the same day that the circumstances ceased, they therefore did so within the seven-day “reasonable time” period required under OAR 471-041-0070. Claimant’s late application for review is therefore 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 the May 20, 2022, PUA determination was due by June 9, 2022. Because claimant did not file their request for hearing until May 28, 2023, the request was late.

On their response to the appellant questionnaire, claimant stated that they did not know when they received the May 20, 2022, PUA determination. EAB Exhibit 1 at 4. Claimant did not indicate a time period during which they received it, or else state that they never received it. Further, the remainder of claimant's statements on the questionnaire response appear to primarily address the merits of the May 20, 2022, PUA determination itself, rather than the reason why the request for hearing on that decision was filed late. For instance, claimant responded to the question asking why they did not file a timely request for hearing by stating, "Well I called and talk[ed] to a few people that was telling me different things to do and telling me different things to turn in and I did so many times and nothing happened[.]" EAB Exhibit 1 at 3. This appears to refer to the substantiation requirements (i.e., the requests for proof of employment or self-employment) which formed the basis for the May 20, 2022, PUA determination decision. Given these statements, it is reasonable to conclude that claimant received the May 20, 2022, PUA determination at some point, as they appeared to understand, as explained on that decision, that the Department required additional documentation of them.

Additionally, under ORS 40.135(1)(q), there is a presumption that a letter duly directed and mailed was received in the regular course of the mail. Thus, without any indication in the record of when claimant received the May 20, 2022, PUA determination, it is presumed that claimant received it in the ordinary course of mail, and that receiving it late therefore was not the cause of the late request for hearing.

Claimant's statement regarding having talked to "a few people" who told them "different things to do and... turn in" suggests that the cause of the late request for hearing was that they continued to focus on attempting to satisfy the substantiation requirements of the PUA program, and did not realize that they could appeal the administrative decision. Although this was likely the result of a mistake on claimant's part, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Additionally, under OAR 471-040-0010(1)(b)(B), "good cause" for filing a late request for hearing does not include "not understanding the implications of a decision or notice when it is received."

For the above reasons, claimant has failed to show that they filed their late request for hearing due to factors beyond their reasonable control or an excusable mistake. Therefore, claimant's late request for hearing is dismissed, and the May 20, 2022, PUA determination remains undisturbed.

DECISION: Claimant's late application for review of Order No. 24-UI-244926 is allowed. Order No. 24-UI-244926 is affirmed.

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

DATE of Service: March 19, 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

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.