

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0193

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On June 9, 2021, 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 29, 2021, the June 9, 2021, PUA determination became final without claimant having filed a request for hearing. On September 27, 2022, the Department served notice of an administrative decision, based in part on the June 9, 2021, PUA determination, concluding that claimant received benefits to which they were not entitled, and assessing an overpayment of \$615 in PUA benefits and \$900 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 100317). On October 17, 2022, decision # 100317 became final without claimant having filed a request for hearing. On December 19, 2023, claimant filed late requests for hearing on the June 9, 2021, PUA determination and decision # 100317.

ALJ Kangas considered claimant's requests, and on January 18, 2024, issued Orders No. 24-UI-245802 and 24-UI-245804, dismissing claimant's requests for hearing on the June 9, 2021, PUA determination and decision # 100317, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by February 1, 2024. On February 7, 2024, Orders No. 24-UI-245802 and 24-UI-245804 became final without claimant having filed a response to the appellant questionnaire or applications for review with the Employment Appeals Board (EAB). On February 21, 2024, claimant filed a late response to the appellant questionnaire and late applications for review of Orders No. 24-UI-245802 and 24-UI-245804 with the EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-245802 and 24-UI-245804. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0194 and 2024-EAB-0193).

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, 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. 24-UI-245802, mailed to claimant on January 18, 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-245802 at 2. Order No. 24-UI-245802 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 February 7, 2024.”

(2) Order No. 24-UI-245804, mailed to claimant on January 18, 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-245804 at 2. Order No. 24-UI-245804 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 February 7, 2024.”

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 24-UI-245802 and 24-UI-245804 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. 24-UI-245802 and 24-UI-245804 were due by February 7, 2024. Because claimant did not file their applications for review until February 21, 2024, the applications for review were late. Claimant provided a written statement with the application for review, in the form of their response to the appellant questionnaire. Most of claimant’s response appeared to address the reason they failed to file timely requests for hearing on the June 9, 2021, PUA determination and decision # 100317. This information does not bear on the determination of whether claimant’s late applications for review should be allowed.

However, claimant did include one statement on their response which appears to relate to their late applications for review. In response to the question, “If you believe you had ‘good cause’ for filing your hearing request (appeal) late, please explain why,” claimant stated, “We were traveling in British Columbia & Alberta for three weeks: 1/16/ - 2/6[.]” EAB Exhibit 1 at 2. Given that the orders under review were issued on January 18, 2024, it is likely that claimant intended this statement to explain that they did not timely receive the orders under review because they were travelling and had left two days prior to the orders’ issuance. Claimant’s statement further suggests that they returned one day prior to the timely filing deadline of February 7, 2024.

Given that claimant presumably could have reviewed the orders under review and filed applications for review on or prior to February 7, 2024, it is not clear that they failed to file timely applications for review due to circumstances beyond their reasonable control. Even assuming that their return the day before the filing deadline *did* constitute circumstances beyond their reasonable control, however, those factors would have presumably ceased shortly after their return. Despite this, claimant did not file their applications for review until two weeks after the timely filing deadline. Therefore, even if claimant had good cause for filing the late applications for review, they did not file them within the seven-day “reasonable time” period required by OAR 471-041-0070(2). Claimant’s late applications for review of Orders No. 24-UI-245802 and 24-UI-245804 are therefore dismissed.

DECISION: The applications for review filed February 21, 2024, are dismissed. Orders No. 24-UI-245802 and 24-UI-245804 remain undisturbed.

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

DATE of Service: March 27, 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.

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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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