

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0224

Late Application for Review Allowed
Order No. 24-UI-247228 Affirmed
Requests to Reopen Allowed
Late Claims for Benefits Denied

PROCEDURAL HISTORY: On August 31, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks from March 14 through July 24, 2021 (weeks 11-21 through 29-21) and the week from August 1 through August 7, 2021 (week 31-21), and was ineligible for benefits for those weeks (decision # 92454). Claimant filed a timely request for hearing. On December 30, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for January 11, 2023. On January 11, 2023, claimant failed to appear at the hearing, and ALJ Logan issued Order No. 23-UI-212367, dismissing claimant's request for hearing due to her failure to appear.

On January 30, 2023, claimant filed a timely request to reopen the hearing. On June 14, 2023, OAH served notice of a hearing scheduled for June 27, 2023 to determine whether to grant claimant's request to reopen and, if so, the merits of decision # 92454. On June 27, 2023, claimant failed to appear at the hearing, and ALJ Scott issued Order No. 23-UI-228825, dismissing claimant's request for hearing due to her failure to appear. On June 27, 2023, Order No. 23-UI-228825 became final without claimant having filed a request to reopen the hearing. On September 21, 2023, claimant filed a late request to reopen the hearing. On January 23, 2024, ALJ Nyberg conducted a hearing, and on February 2, 2024 issued Order No. 24-UI-247228, allowing claimant's requests to reopen but affirming decision # 92454. On February 22, 2024, Order No. 24-UI-247228 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On February 28, 2024, claimant filed a late application for review with EAB.

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), other than EAB Exhibit 1 as indicated below, EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the written statement claimant provided with her late application for review, which consists of email communications between claimant and an OAH representative as well as second mailed copy of Order No. 24-UI-247228, not mailed to claimant's updated address, but which she was able to obtain. The additional evidence 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 January 23, 2024, ALJ Nyberg convened a hearing in this matter. At the beginning of the hearing, the ALJ asked claimant to verify her mailing address. Audio Record at 00:33. Claimant advised that the mailing address on the notice she received for the hearing, an address located on Dixie Lane in Medford, Oregon, was incorrect. Audio Record at 00:27. Claimant advised that her updated mailing address was an address located on SE Aspen Summit Drive in Portland, Oregon. Audio Record at 00:40.

(2) On February 2, 2024, OAH mailed Order No. 24-UI-247228 to claimant. However, OAH mailed the order to claimant's old address in Medford, and not claimant's updated address in Portland. Order No. 24-UI-247228 stated on its certificate of mailing that "Any appeal from this Order must be filed on or before February 22, 2024 to be timely." Because it was sent to the wrong address, claimant did not receive Order No. 24-UI-247228 in the mail.

(3) On February 14, 2024, claimant emailed OAH, noting that she had not received anything following the hearing and checking whether OAH had updated claimant's address information. EAB Exhibit 1 at 1. An OAH representative responded asking whether claimant wished to have a copy of Order No. 24-UI-247228 emailed to her. EAB Exhibit 1 at 3. Claimant confirmed that she did, and the representative emailed a PDF copy of the order to claimant that day. EAB Exhibit 1 at 3. However, claimant was unable to view the attachment sent by the OAH representative. EAB Exhibit 1 at 3.

(4) On February 15, 2024, the representative sent a copy of Order No. 24-UI-247228 to claimant by email as a Microsoft Word document. EAB Exhibit 1 at 2-3. Claimant experienced difficulty reading the attachment and asked the representative to explain what the order stated. EAB Exhibit 1 at 2. The representative replied that the order was too long to summarize and emailed another copy of Order No. 24-UI-247228 to claimant as a different file type. EAB Exhibit 1 at 2.

(5) On February 20, 2024, claimant still experienced difficulty reading Order No. 24-UI-247228, and emailed the representative again asking what Order No. 24-UI-247228 stated. EAB Exhibit 1 at 2. Between February 21 and 28, 2024, claimant obtained a second mailed copy of Order No. 24-UI-247228 that OAH had mailed to claimant's old address in Medford. EAB Exhibit 1 at 4-8.

(6) On February 28, 2024, claimant filed a late application for review of Order No. 24-UI-247228.

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 24-UI-247228 is allowed. Order No. 24-UI-247228 is affirmed.

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-247228 was due by February 22, 2024. Because claimant did not file their application for review until February 28, 2024, the application for review was late. Claimant provided a written statement with her application for review consisting of email communications between herself and an OAH representative, as well as a second mailed copy of Order No. 24-UI-247228 that was mailed to claimant’s former Medford address, but which claimant was able to obtain. *See* EAB Exhibit 1 at 1-8. These materials described the circumstances that prevented claimant from timely filing her application for review.

The evidence shows that claimant advised the ALJ of her updated address in Portland during the January 23, 2024 hearing. Audio Record at 00:40. Nevertheless, Order No. 24-UI-247228 was mailed to claimant’s former address in Medford. On February 14, 2024, claimant contacted OAH and obtained a PDF copy of Order No. 24-UI-247228, but was unable to view the copy of the order. EAB Exhibit 2-3. The next day, an OAH representative emailed claimant a Microsoft Word version of the order, but claimant had difficulty reading that attachment too. EAB Exhibit 1 at 2. The representative then emailed claimant yet another copy of the order, under a different file type. EAB Exhibit 1 at 2. However, on February 20, 2024, claimant emailed the representative again asking what Order No. 24-UI-247228 stated, which that claimant likely was still experiencing difficulty reading the emailed copies of the order. EAB Exhibit 1 at 2.

Thereafter, claimant received a second mailed copy of Order No. 24-UI-247228, which was mailed to claimant’s old Medford address, but which claimant was able to obtain. EAB Exhibit 1 at 4-8. Claimant likely received this copy of Order No. 24-UI-247228 between February 21 and 28, 2024. This is because the second mailed copy of Order No. 24-UI-247228 went unmentioned in claimant’s February 20, 2024 email, suggesting claimant had not yet obtained it as of that date. EAB Exhibit 1 at 2. Claimant must have taken possession of the second mailed copy by February 28, 2024, however, because claimant used an application for review form included with the second mailed copy to file her late application for review with EAB, as evidenced by the fact that the application for review form bore the stamp placed on the second mailed copy of Order No. 24-UI-247228, which stated “Mailed For Your Information Only Original Date Of Mailing Constitutes Date Of Service”. EAB Exhibit 1 at 4-8.

Based on the foregoing, circumstances beyond claimant’s reasonable control, namely her non-receipt of the original mailed copy of Order No. 24-UI-247228 and inability to view the emailed copies of the order and therefore become aware of the deadline to appeal, prevented a timely filing. Claimant likely obtained the second mailed copy of Order No. 24-UI-247228 between February 21 and 28 2024. Upon taking possession of that copy of the order, claimant would have notice of the February 22, 2024

deadline to timely appeal, and the circumstances that prevented a timely filing likely ended. However, given that claimant filed her late application for review on February 28, 2024, and the circumstances preventing a timely filing did not cease until between February 21 and 28, 2024, claimant filed her late application for review within a seven-day reasonable time. Claimant therefore established good cause to extend the filing deadline to February 28, 2024, and the late application for review is allowed.

Requests to Reopen and Late Claims for Benefits. EAB considered the entire hearing record. EAB agrees with Order No. 24-UI-247228's findings of fact, reasoning, and conclusions that claimant's requests to reopen was allowed, and that claimant filed late claims for benefits for weeks 11-21 through 29-21 and week 31-21 and was ineligible for benefits for those weeks. Pursuant to ORS 657.275(2), Order No. 24-UI-247228 is **adopted**.

DECISION: Order No. 24-UI-247228 is affirmed.

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

DATE of Service: April 5, 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.

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