

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0229-R

Request for Reconsideration Allowed
EAB Decision 2024-EAB-0229 Reversed on Reconsideration
Late Application for Review Allowed
Reversed and Remanded

PROCEDURAL HISTORY: On October 11, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide information in accordance with the Department's rules and was ineligible for benefits for the weeks from September 24 through October 7, 2023 (weeks 39-23 through 40-23) and until the reason for the denial ended (decision # 95414). On October 31, 2023, decision # 95414 became final without claimant having filed a request for hearing.

On December 28, 2023, claimant filed a late request for hearing on decision # 95414. ALJ Kangas considered claimant's request, and on January 18, 2024, issued Order No. 24-UI-245927, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 1, 2024. On February 7, 2024, Order No. 24-UI-245927 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB).

On March 1, 2024, claimant filed a late application for review of Order No. 24-UI-245927 with EAB. On April 8, 2024, EAB issued EAB Decision 2024-EAB-0229, dismissing the late application for review without prejudice. On April 10, 2024, claimant filed a timely request for reconsideration of EAB Decision 2024-EAB-0229. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

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 explanation accompanying claimant's reconsideration request 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) Decision # 95414, mailed to claimant’s address of record on file with the Department on October 11, 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 October 31, 2023.” Exhibit 1 at 2. Claimant filed a request for hearing on decision # 95414 on December 28, 2023.

(2) Order No. 24-UI-245927, mailed to claimant’s address of record 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-245927 at 2. The order 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.” Claimant did not receive Order No. 24-UI-245927.

(3) On March 1, 2024, claimant filed an application for review of Order No. 24-UI-245927 online.

(4) On April 8, 2024, EAB issued EAB Decision 2024-EAB-0229, dismissing the application for review of Order No. 24-UI-245927 as late, without prejudice.

(5) On April 10, 2024, claimant filed a request for reconsideration of EAB Decision 2024-EAB-0229.

CONCLUSIONS AND REASONS: Claimant’s request for reconsideration is allowed. On reconsideration, EAB Decision 2024-EAB-0229 is reversed, and claimant’s late application for review allowed. Order No. 24-UI-245927 is set aside and the matter remanded for a hearing to determine whether to allow claimant’s late request for hearing and, if so, the merits of decision # 95414.

Reconsideration. ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including “the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law.” The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2) (May 13, 2019).

EAB dismissed claimant’s late application for review without prejudice and subject to claimant filing a timely request for reconsideration within 20 days after EAB’s dismissal decision was issued. Claimant filed a request for reconsideration consistent with the requirements set forth in OAR 471-041-0145. The request for reconsideration is, therefore, allowed.

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-245927 was due by February 7, 2024. Claimant filed their application for review on March 1, 2024, and it therefore was filed late.

With their request for reconsideration, claimant stated, “I never received any letters saying I needed to do anything[.]” EAB Exhibit 1 at 1. This suggests that claimant did not receive Order No. 24-UI-245927, which contained an appellant questionnaire asking claimant to explain why their request for hearing was filed late. Claimant’s failure to receive Order No. 24-UI-245927 was, more likely than not, a factor beyond their reasonable control that prevented timely filing of their application for review. While it is unclear what prompted claimant to file an online application for review on March 1, 2024, given that it was only about three weeks late, it can reasonably be inferred that claimant learned of the existence of Order No. 24-UI-245927 through other means, no more than seven days prior to March 1, 2024. The factor that prevented timely filing ceased at that time. Accordingly, good cause has been shown to extend the deadline for timely filing and the late application for review was filed within a “reasonable time” after the factor that prevented timely filing ceased. 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 on decision # 95414 was due by October 31, 2023. Claimant filed their request for hearing on December 28, 2023, and the request therefore was late. It is unclear whether claimant’s statement that they “never received any letters saying I needed to do anything” meant that they did not timely receive decision # 95414, however it suggests this possibility. If so, claimant may have been prevented from timely filing their request for hearing by a factor beyond their reasonable control. Because claimant likely did not receive Order No. 24-UI-245927, and did not have a chance to respond to the attached appellant questionnaire, further development of the record is needed.

On remand, the ALJ should inquire whether and when claimant received decision # 95414, what factors may have prevented or delayed receipt of that decision if not timely received, whether these factors were beyond claimant’s reasonable control or the result of an excusable mistake, and whether any other such factors prevented timely filing. Further, if good cause is found to extend the deadline for timely filing, additional inquiry should be made to determine whether claimant filed their late request for hearing within a “reasonable time” after the factors that prevented timely filing ended.

For these reasons, claimant’s request for reconsideration is allowed. On reconsideration, EAB Decision 2024-EAB-0229 is reversed and claimant’s late application for review allowed. Order No. 24-UI-245927 is set aside and the matter remanded for a hearing to determine whether to allow claimant’s late request for hearing and, if so, the merits of decision # 95414.

DECISION: Order No. 24-UI-245927 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: May 24, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-245927 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

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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، می توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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