

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0250

Late Application for Review Allowed
Reversed & Remanded

PROCEDURAL HISTORY: On July 28, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had failed to attend a reemployment and eligibility assessment (REA) and was ineligible for benefits for the week of July 9 through 15, 2023 (week 28-23) and until the reason for the denial ended. On August 17, 2023, the July 28, 2023, administrative decision became final without claimant having filed a request for hearing. On October 7, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on October 11, 2023, issued Order No. 23-UI-238303, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 25, 2023. On October 31, 2023, Order No. 23-UI-238303 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On November 15, 2023, claimant filed a late response to the appellant questionnaire and a late application for review of Order No. 23-UI-238303 with EAB. On March 7, 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. This matter comes before EAB based upon claimant's November 15, 2023, application for review of Order No. 23-UI-238303.

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 written statement enclosed with the application for review and claimant's response to the appellant questionnaire. This 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 July 28, 2023, the Department mailed the July 28, 2023, administrative decision to claimant's address on file with the Department. The July 28, 2023, administrative decision

stated, “Any appeal from this decision must be filed on or before AUG 17, 2023 to be timely.” Exhibit 1 at 1.

(2) Order No. 23-UI-238303, mailed to claimant on October 11, 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-238303 at 2. Order No. 23-UI-238303 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 October 31, 2023.”

(3) Claimant was out of state and away from their residence for a training course from October 12 through November 12, 2023. Claimant did not have access to their mail at this time, and therefore did not receive a copy of Order No. 23-UI-238303 until after they returned.

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 23-UI-238303 is allowed. Order No. 23-UI-238303 is reversed, and this matter remanded for a hearing on whether claimant’s late request for hearing on the July 28, 2023, administrative decision should be allowed and, if so, the merits of that decision.

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. 23-UI-238303 was due by October 31, 2023. Because claimant did not file their application for review until November 15, 2023, the application for review was late. In their written statement enclosed with the application for review, claimant explained that they did not timely receive the order under review because they were out of state for a month-long training, and did not have access to their mail at that time. EAB Exhibit 1 at 1. Claimant did not return from the training until November 12, 2023, after the timely filing deadline had already passed. Therefore, claimant failed to file a timely application for review due to factors or circumstances beyond their reasonable control. Those factors or circumstances ceased when claimant returned home and regained access to their mail on November 12, 2023. As claimant filed their application for review three days later, on November 15, 2023, they did so within the seven-day “reasonable time” period required. As such, claimant’s late application for review of Order No. 23-UI-238303 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. Good cause does not include not understanding the implications of a decision or notice when it is received. OAR 471-040-0010(1)(b)(B).

The request for hearing on the July 28, 2023, administrative decision was due by August 17, 2023. Because claimant did not file their request for hearing until October 7, 2023, the request was late. In their appellant questionnaire response, claimant stated that they received the July 28, 2023, administrative decision on October 5, 2023 “via Workforce [*sic*] interview in Medford, Oregon after completing REA.” EAB Exhibit 1 at 2. Claimant further stated that they filed their request for hearing on October 7, 2023, via the Department’s web contact form, after meeting with a claims specialist. EAB Exhibit 1 at 2–3. Additionally, claimant explained in their statement enclosed with the application for review that they had been filing claims for benefits until July 6, 2023, started a seasonal job as a river guide a few days later on July 10, 2023, and concluded that job on September 5, 2023. EAB Exhibit 1 at 1.

Claimant’s above statements suggest that they may not have received the July 28, 2023, administrative decision prior to the timely filing deadline, which may have constituted factors beyond their reasonable control. However, further information is required to determine whether claimant’s late request for hearing should be allowed. First, it is not clear from claimant’s statements if they were out of town or otherwise unable to access their mail while they were working their seasonal job from July through September 2023, such that they would not have been able to receive the administrative decision until their return. Next, even if they were away from home or otherwise unable to access their mail through September 5, 2023, it is not clear from claimant’s statement what would have caused them to not receive, or have access to, the administrative decision once the seasonal job concluded. On remand, the ALJ should develop the record to clarify when claimant received the July 28, 2023, administrative decision and what, if anything, caused them to receive it after the timely filing deadline. Additionally, to the extent that claimant received, or otherwise became aware of, the July 28, 2023, administrative decision prior to October 7, 2023, the ALJ should inquire as to why claimant waited until that date to file the request for hearing.

Order No. 23-UI238303 is therefore set aside, and this matter remanded for a hearing on whether claimant’s late request for hearing should be allowed and, if so, the merits of the July 28, 2023, administrative decision.

DECISION: Claimant’s late application for review of Order No. 23-UI-238303 is allowed. Order No. 23-UI-238303 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: March 14, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-238303 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 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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