

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0504-R

Request for Reconsideration Allowed
EAB Decision 2024-EAB-0504 Adhered to on Reconsideration

PROCEDURAL HISTORY: On June 21, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from March 20 through April 23, 2022 (weeks 12-22 through 16-22) and was ineligible for benefits for those weeks and until the reason for the denial ended (decision # 143855). On July 11, 2022, decision # 143855 became final without claimant having filed a request for hearing.

On January 12, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on May 22, 2023, issued Order No. 23-UI-225619, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by June 5, 2023. On June 6, 2023, claimant filed a late response to the appellant questionnaire. On October 3, 2023, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 23-UI-225619 was vacated and that a hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of decision # 143855.

On October 17, 2023, ALJ Frank convened a hearing at which claimant appeared and requested a postponement, which was granted. On November 15, 2023, notice was mailed to claimant that the hearing had been rescheduled for November 29, 2023. Claimant failed to appear for this hearing, and on November 29, 2023, ALJ Frank issued Order No. 23-UI-242148, dismissing claimant's late request for hearing due to his failure to appear. On December 19, 2023, Order No. 23-UI-242148 became final without claimant having filed a request to reopen the hearing.

On February 28, 2024, claimant filed a late request to reopen the November 29, 2023, hearing. ALJ Kangas considered the request, and on March 26, 2024, issued Order No. 24-UI-250879, denying the

request and leaving Order No. 23-UI-242148 undisturbed. On April 15, 2024, Order No. 24-UI-250879 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On June 14, 2024, claimant filed a late application for review of Order No. 24-UI-250879 with EAB. On July 18, 2024, EAB issued EAB Decision 2024-EAB-0504, dismissing claimant's late application for review without prejudice. On August 6, 2024, claimant filed a timely request for reconsideration of EAB Decision 2024-EAB-0504. 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 claimant's request for reconsideration and has been marked as EAB Exhibit 2, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 2 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-250879, mailed to claimant on March 26, 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-250879 at 4. Order No. 24-UI-250879 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before April 15, 2024, to be timely." Claimant received the order prior to April 15, 2024.

(2) In "the second week of March [2024]," claimant's father suffered an ankle injury "which kept him off his feet for more than a week." EAB Exhibit 2 at 6. At this time, claimant's mother was in "rapidly declining health." EAB Exhibit 2 at 6. Claimant provided care for his father while he recovered from the injury, and for his mother until her death on April 28, 2024.

(3) As of March 26, 2024, claimant believed that he "could still request [and] be granted a Hearing &/or Appeal with 'good cause,'" and that the difficulties he was experiencing as a result of his parents' health problems would constitute good cause to delay filing appeals related to his unemployment insurance claim. EAB Exhibit 2 at 8.

(4) On June 14, 2024, claimant filed a late application for review of Order No. 24-UI-250879 with EAB.

(5) On July 18, 2024, EAB issued EAB Decision 2024-EAB-0504, dismissing claimant's late application for review without prejudice.

(6) On August 6, 2024, claimant filed a request for reconsideration of EAB Decision 2024-EAB-0504.

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is allowed. On reconsideration, EAB Decision 2024-EAB-0504 is adhered to, as clarified herein.

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).

Claimant's request for reconsideration was filed within 20 days after the decision sought to be reconsidered was mailed, and asserted that reconsideration was appropriate to correct a previous error of fact or law. Accordingly, claimant's request met the threshold requirements for reconsideration and is 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-250879 was due by April 15, 2024. Because claimant did not file his application for review until June 14, 2024, the application for review was late.

Claimant provided an additional statement with his request for reconsideration describing the circumstances that delayed timely filing of the application for review. *See* EAB Exhibit 2. The statement did not assert that claimant failed to timely receive Order No. 24-UI-250879. Instead, it explained that claimant, believing he had good cause to do so, delayed taking action on his pending unemployment insurance appeals as he cared for his ailing parents, particularly his mother, during the timely filing period of March 26, 2024, through April 15, 2024.¹ EAB Exhibit 2 at 6-7. This was undoubtedly a stressful time for claimant, particularly in light of his mother's death occurring shortly thereafter on April 28, 2024. Even allowing that these circumstances were beyond claimant's reasonable control and prevented him from timely filing his application for review, it can nevertheless reasonably be inferred that these circumstances ceased more than seven days prior to June 14, 2024, when claimant filed the late application for review.

Therefore, even if good cause existed to extend the filing deadline to one month after claimant's mother's death, to account for claimant's mental state and other obligations that typically follow the death of a family member, the circumstances that prevented timely filing ceased by the end of May 2024 at the latest. Because claimant's application for review was filed more than seven days later, on June 14, 2024, it was not filed within a "reasonable time." Accordingly, claimant's late application for review was properly dismissed, and EAB Decision 2024-EAB-0504 is adhered to on reconsideration.

DECISION: Claimant's request for reconsideration is allowed. EAB Decision 2024-EAB-0504 is adhered to on reconsideration.

¹ The record suggests that claimant's father recovered from his ankle injury by the third week of March 2024, such that he could walk on his own, and was no longer dependent on claimant for his daily needs as of March 26, 2024, when the timely filing period began.

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

DATE of Service: August 23, 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
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