

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0535

Late Application for Review Allowed
Affirmed
Disqualification

PROCEDURAL HISTORY: On May 3, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and therefore was disqualified from receiving unemployment insurance benefits effective March 17, 2024 (decision # L0003954749). Claimant filed a timely request for hearing. On June 11, 2024, ALJ Christon conducted a hearing at which the employer failed to appear, and on June 13, 2024, issued Order No. 24-UI-256496, modifying decision # L0003954749 by concluding that claimant was discharged for misconduct and therefore was disqualified from receiving benefits effective March 10, 2024.¹ On July 3, 2024, Order No. 24-UI-256496 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On July 11, 2024, claimant filed a late application for review with EAB.

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 statement enclosed with the late application for review, and the postmarked envelope in which the application for review was mailed. 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.

WRITTEN ARGUMENT: Claimant's statement enclosed with the application for review also included a substantive argument relating to the merits of decision # L0003954749, and documents to support that argument. Claimant did not declare that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained

¹ Although Order No. 24-UI-256496 stated that it affirmed decision # L0003954749, it modified that decision by changing the effective date of the disqualification from March 17, 2024, to March 10, 2024. Order No. 24-UI-256496 at 3.

information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090. With the exception of claimant's late application for review statement, above, EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Order No. 24-UI-256496, mailed to claimant on June 13, 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-256496 at 4. Order No. 24-UI-256496 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before July 3, 2024, to be timely."

(2) On June 21, 2024, after having unsuccessfully attempted to file an application for review via Frances Online, claimant contacted the Department by phone to file the application for review. The representative to whom claimant spoke told claimant that "the process was submitted and [claimant would] receive a letter in the mail within a couple of weeks with [claimant's] appeal information on it." EAB Exhibit 1 at 1. On July 9, 2024, claimant called the Department again. The representative to whom he spoke that time advised him that there was "no record" of claimant having filed an application for review, and advised him to mail in an application for review. EAB Exhibit 1 at 1. On July 11, 2024, at the representative's advice, claimant submitted via mail a late application for review of Order No. 24-UI-256496.

CONCLUSIONS AND REASONS: Claimant's late application for review is allowed.

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-256496 was due by July 3, 2024. Because claimant did not file his application for review until July 11, 2024, the application for review was late. Claimant explained in his statement enclosed with the late application for review that he contacted the Department by phone on June 21, 2024, to file his application for review, which would have been timely at that point. He further explained that the representative to whom he spoke on June 21, 2024, advised him that the application for review had been submitted and that claimant would receive further information about the appeal process "within a couple of weeks." Claimant apparently waited for this information and, when he did not receive it, called the Department again on July 9, 2023. The Department advised him that they received no such appeal from him and that he should file it by mail instead. Claimant did so two days later.

Thus, claimant filed the late application for review because he reasonably concluded, based on the Department's representation, that he had already filed a timely application for review and then acted on their advice to wait for further information. This constituted an excusable mistake, as claimant reasonably relied on the Department's representation that the application for review had been successfully filed, and claimant therefore had good cause for filing the late application for review. These circumstances which prevented claimant's timely filing ceased on July 9, 2024, when claimant learned that the original attempt at filing an application for review had been unsuccessful. Because claimant filed the late application for review two days later, on July 11, 2024, he did so within a reasonable time. Claimant's late application for review of Order No. 24-UI-256496 is therefore allowed.

EAB considered the entire hearing record. EAB agrees with Order No. 24-UI-256496's findings of fact, reasoning, and conclusion that claimant was discharged for misconduct and therefore was disqualified from receiving benefits effective March 10, 2024. Pursuant to ORS 657.275(2), Order No. 24-UI-256496 is **adopted**.

DECISION: Claimant's late application for review of Order No. 24-UI-256496 is allowed. Order No. 24-UI-256496 is affirmed.

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

DATE of Service: July 31, 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 الاستئناف 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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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.