

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0542

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On April 3, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving benefits effective February 25, 2024 (decision # L0003480580). On April 10, 2024, 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 week of April 7 through 13, 2024 (week 15-24) and until the reason for the denial ended (decision # L0003568794).¹ Claimant filed a timely request for hearing on each decision. On June 14, 2024, ALJ Christon conducted hearings on each administrative decision, and on June 21, 2024, issued Orders No. 24-UI-257138 and 24-UI-257194, affirming decisions # L0003480580 and L0003568794.² On July 11, 2024, Orders No. 24-UI-257138 and 24-UI-257194 became final without claimant having filed an application for review with the Employment Appeals Board (EAB).

On July 16, 2024, claimant filed late applications for review of Orders No. 24-UI-257138 and 24-UI-257194 with EAB. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-257138 and 24-UI-257194. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0541 and 2024-EAB-0542).

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 application for review, the envelope in which it was mailed, and a statement regarding the filing, 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.

¹ Though decision # L0003568794 stated that the period of ineligibility began April 9, 2024, this date was a Tuesday, and because benefit weeks begin on Sunday, this is presumed to be a scrivener's error.

² Order No. 24-UI-257194 concluded that the reason for denial of benefits began and ended in week 15-24. Order No. 24-UI-257194 at 3. Therefore, it affirmed decision # L0003568794 because the decision did not specify any additional benefit weeks to which it applied.

FINDINGS OF FACT: (1) Orders No. 24-UI-257138 and 24-UI-257194, mailed to claimant on June 21, 2024, each 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-257138 at 4; Order No. 24-UI-257194 at 3. Orders No. 24-UI-257138 and 24-UI-257194 also each stated on their Certificate of Mailing, “Any appeal from this Order must be filed on or before July 11, 2024, to be timely.”

(2) Claimant filed an application for review of Orders No. 24-UI-257138 and 24-UI-257194 by mail, and the envelope containing the application was postmarked July 16, 2024. EAB Exhibit 1 at 2. The submission was stamped received by EAB on July 18, 2024. EAB Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 24-UI-257138 and 24-UI-257194 are dismissed.

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 applications for review of Orders No. 24-UI-257138 and 24-UI-257194 were each due by July 11, 2024. Though claimant asserted in her written statement, “I mailed my Application for Review on 7.11.24,” the envelope bears a postmark of July 16, 2024. EAB Exhibit 1 at 2-3. The filing date for an application for review filed by mail is the postmark date affixed to the envelope in which the application was mailed. OAR 471-041-0065(1)(b) (May 13, 2019). The only potentially applicable exception is if the postmark date is “improbable,” in which case EAB must determine “the most probable date of filing.” OAR 471-041-0065(2). That the submission was received by EAB two days after the postmark date suggests that the envelope traveled in the ordinary course of the mail. The postmark date therefore is not “improbable.” Under the rule, the applications for review of Orders No. 24-UI-257138 and 24-UI-257194 were filed July 16, 2024, and were therefore late.

Claimant’s written statement did not otherwise suggest an explanation for the late filing. Accordingly, claimant did not show good cause for the late applications for review, and claimant’s late applications for review are dismissed.

DECISION: The applications for review filed July 16, 2024, are dismissed. Orders No. 24-UI-257138 and 24-UI-257194 remain undisturbed.

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

DATE of Service: August 2, 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 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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