

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0553

Late Application for Review Allowed
Reversed – Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On March 19, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0003204622). On April 8, 2024, decision # L0003204622 became final without the employer having filed a request for hearing. On April 15, 2024, the employer filed a late request for hearing. ALJ Kangas considered the employer’s request, and on April 16, 2024, issued Order No. 24-UI-252357, dismissing the employer’s request for hearing as late, subject to the employer’s right to renew the request by responding to an appellant questionnaire by April 30, 2024. On May 6, 2024, Order No. 24-UI-252357 became final without the employer having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On July 22, 2024, the employer filed a late application for review of Order No. 24-UI-252357 with EAB. This matter comes before EAB based upon the employer’s July 22, 2024, late application for review of Order No. 24-UI-252357.

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 employer’s written statement submitted with their application for review, which 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 March 19, 2024, the Department issued decision # L0003204622. Decision # L0003204622 stated, “You have the right to appeal our decision and request a hearing if you believe our decision is wrong. We must receive your request for a hearing no later than **April 8, 2024**. If you make your request late, you may still get your hearing if the hearings officer decides that you have proven good cause for not requesting a hearing on time.” Exhibit 1 at 2 (emphasis in original).

(2) Due to “continued issues with Franc[e]s Online and the Employment Department,” the employer’s representative did not receive decision # L0003204622 until April 12, 2024. Exhibit 2 at 1 (emphasis in original removed).

(3) On April 15, 2024, the employer’s representative sent an email to a representative of the Department and two representatives of the Office of Administrative Hearings (OAH) requesting a hearing on decision # L0003204622. Exhibit 2 at 1.

(4) On April 16, 2024, OAH mailed Order No. 24-UI-252357 to the address of the employer’s representative on file with OAH. Order No. 24-UI-252357 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-252357 at 2. Order No. 24-UI-252357 also stated on its certificate of mailing that “Any appeal from this Order must be filed on or before May 6, 2024, to be timely.”

(5) The employer’s representative did not receive Order No. 24-UI-252357. EAB Exhibit 1 at 1. On May 6, 2024, Order No. 24-UI-252357 became final without the employer having filed an application for review with EAB.

(6) On or shortly before July 22, 2024, the employer’s representative contacted OAH to inquire about the status of “[h]earing [r]equests that are getting a bit old,” including the employer’s April 15, 2024, late request for hearing on decision # L0003204622. EAB Exhibit 1 at 1. Representatives of OAH informed the employer’s representative that Order No. 24-UI-252357 had been issued. EAB Exhibit 1 at 1.

(7) On July 22, 2024, the employer’s representative filed a late application for review of Order No. 24-UI-252357 with EAB. EAB Exhibit 1 at 1.

CONCLUSIONS AND REASONS: The employer’s late application for review is allowed. Order No. 24-UI-252357 is reversed, the employer’s late request for hearing is allowed, and a hearing on the merits of decision # L0003204622 is required.

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-252357 was due by May 6, 2024. Because the employer did not file their application for review until July 22, 2024, the application for review was late.

The employer's failure to receive Order No. 24-UI-252357 was a circumstance beyond their reasonable control. As the employer was unaware that the order had been issued, they took no action to file an application for review of that order within the timely filing period. This circumstance ceased to exist on or shortly before July 22, 2024, when, during a communication with OAH representatives regarding the status of "[h]earing [r]equests that are getting a bit old," the employer's representative learned that Order No. 24-UI-252357 had issued.¹ Within a seven-day "reasonable time" period thereafter, on July 22, 2024, the employer filed their late application for review of Order No. 24-UI-252357.

Accordingly, the employer's failure to receive Order No. 24-UI-252357 was a factor beyond their reasonable control that prevented a timely filing. This factor ceased to exist on or shortly before July 22, 2024, and the employer filed their late application for review on July 22, 2024, which was within a seven-day reasonable time. Thus, the employer established good cause to extend the application for review filing deadline and filed within a reasonable time. The late application for review is therefore 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 deadline to file a timely request for hearing on decision # L0003204622 was April 8, 2024. The employer did not file a request for hearing until April 15, 2024. Accordingly, the employer's request for hearing was late.

Decision # L0003204622 was issued on March 19, 2024. However, because of "continued issues with Franc[e]s Online and the Employment Department," the employer's representative did not receive decision # L0003204622 until April 12, 2024. Exhibit 2 at 1 (emphasis in original removed). The employer's failure to receive the administrative decision because of difficulties associated with the Department's new Frances Online system was a circumstance beyond their reasonable control that prevented the employer from requesting a hearing in a timely manner. That circumstance ceased on April 12, 2024, when the employer's representative received decision # L0003204622. Three days later, on April 15, 2024, the employer filed a late request for hearing on decision # L0003204622.

Accordingly, the employer established good cause to extend the deadline to file a request for hearing on decision # L0003204622 and did so within a seven-day reasonable time. Order No. 24-UI-252357 therefore is reversed, the employer's late request for hearing is allowed, and the employer is entitled to a hearing on the merits of decision # L0003204622.

¹ In the written statement filed with their late application for review, the employer's representative did not state the date on which they contacted OAH and learned that Order No. 24-UI-252357 had been issued. However, given that the employer's representative filed the late request for hearing only three days after learning of its issuance, it is reasonable to infer that the employer's representative acted with similar speed and diligence in filing the late application for review after learning of the issuance of Order No. 24-UI-252357. Therefore, more likely than not, the employer learned of the issuance of Order No. 24-UI-252357 no more than three days prior to July 22, 2024.

DECISION: Order No. 24-UI-252357 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: August 6, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-252357 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 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، می توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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