

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0569

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On May 17, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work or available for work during the week of March 10, 2024 through March 16, 2024 (week 11-24) and was therefore ineligible to receive unemployment insurance benefits for that week, and assessing an overpayment of \$812 in regular unemployment insurance (regular UI) benefits that claimant was required to repay to the Department pursuant to ORS 657.310 (decision # L0004097495). Also on May 17, 2024, the Department served notice of an administrative decision concluding that claimant was not able to work or available for work during the weeks of March 31, 2024, through April 13, 2024 (weeks 14-24 through 15-24) and was therefore ineligible to receive unemployment insurance benefits for those weeks, and assessing an overpayment of \$1,107 in regular UI benefits that claimant was required to repay to the Department pursuant to ORS 657.310 (decision # L0004065390). Claimant filed a timely request for hearing on each decision.

On July 2, 2024, ALJ Chiller conducted a consolidated hearing at which the Department failed to appear, and on July 10, 2024, issued Orders No. 24-UI-258607 and 24-UI-258597. Order No. 24-UI-258607 modified decision # L0004097495 by concluding that claimant was unavailable for work during week 11-24 and therefore ineligible to receive benefits for that week, and that she was overpaid \$812 in regular UI benefits that she was liable to repay to the Department through deduction from future benefits pursuant to ORS 657.315. Order No. 24-UI-258597 modified decision # L0004065390 by concluding that claimant was able and available to work during week 15-24 and therefore eligible to receive benefits for that week, but was not available for work during week 14-24 and was therefore ineligible to receive benefits for that week, and was overpaid \$565 in regular UI benefits that she was liable to repay to the Department through deduction from future benefits pursuant to ORS 657.315. On July 30, 2024, Orders No. 24-UI-258607 and 24-UI-258597 became final without claimant having filed applications for review with the Employment Appeals Board (EAB). On July 31, 2024, claimant filed late applications for review of Orders No. 24-UI-258607 and 24-UI-258597 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-258607 and 24-UI-258597. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0568 and 2024-EAB-0569).

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 written statement explaining why the applications for review were filed late, 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.

FINDINGS OF FACT: (1) Order No. 24-UI-258607, mailed to claimant on July 10, 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-258607 at 4. Order No. 24-UI-258607 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before July 30, 2024, to be timely.”

(2) Order No. 24-UI-258597, mailed to claimant on July 10, 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-258597 at 5. Order No. 24-UI-258597 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before July 30, 2024, to be timely.”

(3) Claimant received both orders prior to the July 30, 2024, timely filing deadline. However, claimant “misunderstood the appeal deadline, mistakenly believing it to be July 31st” and therefore filed her applications for review on July 31, 2024. EAB Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 24-UI-258607 and 24-UI-258597 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-258607 and 24-UI-258597 were each due by July 30, 2024. Claimant filed her applications for review on July 31, 2024, and therefore they were late. Claimant’s written statement suggested that she received the orders under review prior to the timely filing deadline but “misunderstood” the deadline. EAB Exhibit 1 at 1. Claimant did not explain the cause of this misunderstanding.

Each order’s certificate of mailing stated the deadline for filing an application for review, suggesting that understanding the deadline was not beyond claimant’s reasonable control. While claimant may have made a mistake regarding the date of the deadline, she has not shown that this was an “excusable”

mistake under the Department's rules, such as one that arises from a lack of due process, inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Because claimant has not shown that factors or circumstances beyond her reasonable control or an excusable mistake prevented timely filing, she has not shown good cause to extend the filing deadline, and her late applications for review are dismissed.

DECISION: The applications for review filed July 31, 2024, are dismissed. Orders No. 24-UI-258607 and 24-UI-258597 remain undisturbed.

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

DATE of Service: August 12, 2024

NOTE: The Department may defer recovery or completely waive the overpaid amount if certain standards are met. If you apply but do not qualify for a waiver, other relief may be available, such as temporarily pausing collection efforts or limiting reductions of current benefits. It is important to apply for a waiver as soon as possible because waivers are not retroactive. For more information on requesting a waiver, call 503-947-1995 or go to <https://unemployment.oregon.gov/overpayments>

The Overpayment Waiver Application is available for download at <https://unemployment.oregon.gov/uploads/docs/FORM129-EN.pdf> and can be submitted in any of these ways:

- **Frances Online:** Log in to your Frances Online account and use “Send a Message”
- **Use the Contact Us form online at:** unemployment.oregon.gov/contact
- **Email:** UIOverpayments@employ.oregon.gov – Subject: “Waiver Request”
- **Fax:** 503-947-1811 – ATTN: BPC Waiver Requests
- **U.S. Mail:** BPC Overpayment Waivers, PO Box 14130, Salem, OR 97311

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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