

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0596

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

PROCEDURAL HISTORY: On June 11, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$2,148 overpayment that claimant was required to repay to the Department, a \$429.60 monetary penalty, and a 13-week penalty disqualification from future benefits (decision # 194308). On July 1, 2021, the Department considered decision # 194308 to have become final without claimant having filed a request for hearing.¹ On July 19, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on August 3, 2021, issued Order No. 21-UI-171676, dismissing the request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 17, 2021. On August 23, 2021, Order No. 21-UI-171676 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On August 13, 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 late application for review and written statement 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 As explained in greater detail below, claimant requested a hearing on June 29, 2021, but the Department failed to recognize this as a timely filed request for hearing.

FINDINGS OF FACT: (1) Decision # 194308, mailed to claimant’s address of record on file with the Department on June 11, 2021, stated, “To be timely, any appeal from this decision must be filed on or before JULY 1, 2021.” Exhibit 1 at 1 (emphasis in original). Claimant had moved from their address of record in late 2020, however they received the decision on or before June 29, 2021.

(2) On June 29, 2021, claimant sent an email to the Department in reference to “a notification. . . that I’ve been overpaid benefits,” stating, in part, “I was not aware of any [earnings] discrepancies. I want to get this resolved before any decision is final.” EAB Exhibit 1 at 3. The email also stated that claimant’s address of record was incorrect. The Department did not construe this email as a request for hearing. A second request, filed July 19, 2021, was therefore construed by the Department as a late request for hearing.

(3) Order No. 21-UI-171676, mailed on August 3, 2021, 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. 21-UI-171676 at 2. Order No. 21-UI-171676 also stated on its Certificate of Mailing, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than August 23, 2021.” The address to which the order was mailed was the address claimant had told the Department was incorrect in the June 29, 2021, email. Claimant did not receive Order No. 21-UI-171676 and was unaware of its issuance.

(4) On August 13, 2024, claimant filed an application for review with EAB that referenced decision # 194308, but made no mention of Order No. 21-UI-171676.

CONCLUSIONS AND REASONS: Claimant’s late application for review is allowed. Claimant’s request for hearing was timely, and a hearing on the merits of decision # 194308 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. 21-UI-171676 was due by August 23, 2021. Claimant’s application for review was filed on August 13, 2024, and was therefore late. The record suggests that claimant failed to receive Order No. 21-UI-171676 and was unaware of its issuance, which prevented timely filing.

Claimant’s late application for review referenced only information contained in decision # 194308, and did not mention Order No. 21-UI-171676. *See* EAB Exhibit 1 at 1. Further, claimant wrote that they received an email acknowledgement of their July 19, 2021, request for hearing, but implied that they received no other documents regarding the appeal from the Department or Office of Administrative Hearings (OAH) thereafter. EAB Exhibit 1 at 4. It can therefore reasonably be inferred that claimant was

unaware that the order under review had been issued. That Order No. 21-UI-171676 was mailed to an address which claimant had informed the Department several weeks earlier was incorrect further supports the inference that claimant did not receive Order No. 21-UI-171676. As it was reasonable for claimant to believe that the June 29, 2021, email, in which claimant mentioned that the address on file was incorrect, would cause any further correspondence regarding the appeal to be sent to claimant's new address, claimant's failure to receive the order under review was a circumstance beyond claimant's reasonable control that prevented timely filing. Furthermore, because claimant remained unaware that Order No. 21-UI-171676 had been issued as of the date the late application for review was filed, it was filed within a "reasonable time." Therefore, claimant's late application for review is 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 request for hearing on decision # 194308 was due by July 1, 2021. Claimant's July 19, 2021, request for hearing was therefore late. However, claimant sent an email to the Department on June 29, 2021, which expressed disagreement with decision # 194308's conclusion that claimant had unreported earnings, and requested that the disagreement be "resolved before any decision is final." EAB Exhibit 1 at 3. OAR 471-040-0005(1) (July 15, 2018) provides, in relevant part, that use of a specific form is not required to request a hearing "provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed." OAR 471-040-0005(2) provides, in part, that requests for hearing can be filed by email. As claimant's email referenced disagreeing with the conclusion that claimant had been overpaid, and stated an intent to "get this resolved before any decision is final," the email met the rule's requirements to be considered a request for hearing. Because claimant filed this request on June 29, 2021, prior to the filing deadline of July 1, 2021, the request was timely. A hearing on the merits of decision # 194308 is therefore required.

For these reasons, claimant's late application for review is allowed, claimant's request for hearing is timely, and the matter is remanded for a hearing on the merits of decision # 194308.

DECISION: Claimant's late application for review is allowed. Order No. 21-UI-171676 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 28, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-171676 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 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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