

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0674

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On January 23, 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 September 10, 2023 (decision # 64028). On January 25, 2024, the Department served notice of an administrative decision concluding that claimant was not available for work from December 31, 2023, through January 6, 2024 (week 01-24) and therefore was not eligible for unemployment insurance benefits for that week (decision # 62827). On February 12, 2024, decision # 64028 became final without claimant having filed a request for hearing. On February 14, 2024, decision # 62827 became final without claimant having filed a request for hearing. On April 15, 2024, claimant filed a late request for hearing on decision # 64028. On May 6, 2024, claimant filed a late request for hearing on decision # 62827.

ALJ Scott considered claimant's requests, and on July 19, 2024, issued Order No. 24-UI-259662, dismissing claimant's request for hearing on decision # 62827 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 2, 2024. On July 23, 2024, ALJ Scott issued Order No. 24-UI-259999, dismissing claimant's request for hearing on decision # 64028 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 6, 2024. On August 8, 2024, and August 12, 2024, respectively, Orders No. 24-UI-259662 and 24-UI-259999 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On September 20, 2024, claimant filed late applications for review of Orders No. 24-UI-259662 and 24-UI-259999 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-259662 and 24-UI-259999. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0675 and 2024-EAB-0674).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's written statement provided with their applications for review. The written statement 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-259662, mailed to claimant on July 19, 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-259662 at 2. Order No. 24-UI-259662 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 8, 2024.”

(2) Order No. 24-UI-259999, mailed to claimant on July 23, 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-259999 at 2. Order No. 24-UI-259999 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 12, 2024.”

(3) Claimant received Orders No. 24-UI-259662 and 24-UI-259999 shortly after they were mailed. However, at the time claimant received the orders, they were “preoccupied with [a] Texas legal redress that required [them] to submit all text, phone, email, recording, and documents to [their] lawyer[.]” EAB Exhibit 1 at 2.

(4) During the period of July 28 through July 31, 2024, claimant’s wife was ill and claimant was busy caring for their three children. EAB Exhibit 1 at 2. During the period of August 2 through August 5, 2024, claimant and one of their children were ill. EAB Exhibit 1 at 2. Claimant’s wife became ill again from August 10 through August 12, 2024. EAB Exhibit 1 at 2.

(5) On August 13, 2024, claimant and their family traveled from their home in Portland, Oregon to the Dominican Republic. EAB Exhibit 1 at 2. Claimant found the wi-fi signal strength at the departing airport on August 13, 2024, was poor so he could not use the internet to appeal Orders No. 24-UI-259662 or 24-UI-259999 on that day. EAB Exhibit 1 at 2. Claimant’s access to Frances Online was blocked in the Dominican Republic, and claimant believed that prevented them from appealing Orders No. 24-UI-259662 and 24-UI-259999 while they were abroad.

(6) On August 28, 2024, claimant returned home to Portland. EAB Exhibit 1 at 3-5. On September 20, 2024, claimant filed applications for review of Orders No. 24-UI-259662 and 24-UI-259999 by mailing the paper application for review form enclosed in Order No. 24-UI-259999 to EAB.

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 24-UI-259662 and 24-UI-259999 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 application for review of Order No. 24-UI-259662 was due by August 8, 2024. The application for review of Order No. 24-UI-259999 was due by August 12, 2024. Because claimant did not file their applications for review of Orders No. 24-UI-259662 and 24-UI-259999 until September 20, 2024, the applications for review were late.

Claimant provided a written statement with their applications for review. In it, claimant described circumstances relating to a lawsuit in Texas, and personal illness and illnesses in their family that could constitute circumstances beyond their control preventing them from filing applications for review from the point they received the orders, shortly after July 19, and July 23, 2024, through August 12, 2024. On August 13, 2024, claimant and their family traveled from Portland to the Dominican Republic. Claimant encountered weak wi-fi signal strength at the airport that day, but it is not evident that that amounted to a circumstance beyond their control preventing them from filing applications for review. Claimant ultimately successfully filed applications for review of Orders No. 24-UI-259662 and 24-UI-259999 by mailing the paper application for review form enclosed in Order No. 24-UI-259999 to EAB and claimant did not show any reason why they could not have mailed that form on August 13, 2024, airport wi-fi difficulties notwithstanding. From there, claimant spent the period of August 13 through August 28, 2024, in the Dominican Republic and, while there, was blocked from accessing Frances Online. However, claimant’s lack of access to Frances Online was not a circumstance that prevented claimant from filing applications for review of Orders No. 24-UI-259662 and 24-UI-259999. Applications for review are filed online by accessing EAB’s website, not Frances Online.¹ Furthermore, claimant did not show any reason why they could not have mailed the paper application for review form while abroad, given that that was the method claimant used to successfully appeal on September 20, 2024, and claimant did not assert that international mail was not available while they were in the Dominican Republic.

In any event, even if claimant’s airport wi-fi difficulties and time spent in the Dominican Republic constituted circumstances beyond claimant’s reasonable control that prevented a timely filing, those circumstances ended on August 28, 2024, because that was the date claimant returned home to Portland. EAB Exhibit 1 at 3-5. Claimant’s September 20, 2024, late application for review filing date did not occur within seven days of their August 28, 2024, return to Portland, the point in time when the circumstances that prevented a timely filing would have ended. Therefore, even if claimant’s airport wi-fi difficulties and time spent in the Dominican Republic constituted good cause to extend the deadline to file applications for review of Orders No. 24-UI-259662 and 24-UI-259999, claimant did not file their late applications for review within a seven-day “reasonable time.”

For these reasons, claimant’s late applications for review of Orders No. 24-UI-259662 and 24-UI-259999 are dismissed.

¹ The online application for review form may be accessed by visiting EAB’s website at <https://www.oregon.gov/employ/pages/employment-appeals-board.aspx>, clicking the drop-down box labeled “Online Forms”, and clicking the link for “File an application for review.”

DECISION: The applications for review filed September 20, 2024, are dismissed. Orders No. 24-UI-259662 and 24-UI-259999 remain undisturbed.

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

DATE of Service: October 4, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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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.