

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0741

Affirmed
Late Requests to Reopen Denied

PROCEDURAL HISTORY: On February 18, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective December 6, 2020 (decision # 133259). On March 10, 2021, decision # 133259 became final without claimant having filed a request for hearing. On April 1, 2022, the Department served notice of an administrative decision, based in part on decision # 133259, concluding that claimant received benefits to which they were not entitled and assessing an overpayment of combined regular unemployment insurance (regular UI) benefits, Pandemic Emergency Unemployment Compensation (PEUC) benefits, and Federal Pandemic Unemployment Compensation (FPUC) benefits totaling \$13,448 that claimant was required to repay to the Department (decision # 171247). On April 22, 2022, decision # 171247 became final without claimant having filed a request for hearing. On June 22, 2022, claimant filed a late request for hearing on each decision.

ALJ Kangas considered the requests, and on September 29, 2022, issued Orders No. 22-UI-203839 and 22-UI-203886, dismissing the requests for hearing on decisions # 133259 and 171247, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by October 13, 2022. On October 12, 2022, claimant filed a timely appellant questionnaire response. On February 24, 2023, and March 2, 2023, the Office of Administrative Hearings (OAH) mailed letters stating that Orders No. 22-UI-203839 and 22-UI-203886 were vacated and that hearings would be scheduled to determine whether claimant's late requests for hearing should be allowed and, if so, the merits of decisions # 133259 and 171247, respectively. On April 1, 2024, notice was mailed that hearings were scheduled on both matters for April 18, 2024. On April 18, 2024, claimant failed to appear at the hearings, and ALJ Chiller issued Orders No. 24-UI-252570 and 24-UI-252567, dismissing the requests for hearing on decisions # 133259 and 171247, respectively, due to claimant's failure to appear. On May 8, 2024, Orders No. 24-UI-252570 and 24-UI-252567 became final without claimant having filed requests to reopen the hearings. On August 12, 2024, claimant filed additional requests for hearing on decisions # 133259 and 171247 that were construed as late requests to reopen the April 18, 2024, hearings. ALJ Kangas considered the requests, and on October 2, 2024, issued Orders No. 24-UI-268072 and 24-UI-268078, dismissing the late requests to reopen and leaving Orders No. 24-UI-252570

and 24-UI-252567 undisturbed. On October 17, 2024, claimant filed applications for review of Orders No. 24-UI-268072 and 24-UI-268078 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-268072 and 24-UI-268078. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0740 and 2024-EAB-0741).

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 statement included with the applications for review 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) On September 29, 2022, Orders No. 22-UI-203839 and 22-UI-203886 were mailed to claimant's address of record in Clackamas, Oregon. Claimant received those orders shortly thereafter, and on October 12, 2022, faxed to OAH a response to the appellant questionnaire using the form included with those orders.

(2) On February 24, 2023, and March 2, 2023, OAH mailed letters to claimant's address of record in Clackamas stating that Orders No. 22-UI-203839 and 22-UI-203886 were vacated and that hearings would be scheduled to determine whether claimant's late requests for hearing on decisions # 133259 and 171247, respectively, should be allowed and, if so, the merits of those decisions.

(3) On April 1, 2024, notices were mailed to claimant's address of record in Clackamas that hearings on both matters had been scheduled for April 18, 2024. Claimant did not appear at those hearings. On April 18, 2024, Orders No. 24-UI-252570 and 24-UI-252567 were mailed to claimant's Clackamas address, dismissing claimant's requests for hearing due to their failure to appear.

(4) On August 12, 2024, claimant filed additional requests for hearing on decisions # 133259 and 171247 using Frances Online. The requests listed claimant's Clackamas mailing address as their address of record on file with the Department. Order No. 24-UI-268072, Exhibit 5 at 2. These requests were construed as late requests to reopen the April 18, 2024, hearings.

(5) On October 2, 2024, Orders No. 24-UI-268072 and 24-UI-268078 were mailed to claimant's Clackamas address. On October 17, 2024, claimant filed timely applications for review of Orders No. 24-UI-268072 and 24-UI-268078 using the forms attached to those orders. On that filing, claimant also updated their mailing address to one in Ridgefield, Washington. EAB Exhibit 1 at 4.

CONCLUSIONS AND REASONS: Claimant's late requests to reopen the April 18, 2024, hearing are denied.

ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. The period within which a party may request

reopening may be extended if the party requesting reopening has good cause for failing to request reopening within the time allowed, and acts within a reasonable time. OAR 471-040-0041(1) (February 10, 2012). “Good cause” exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant’s reasonable control. OAR 471-040-0041(2). “A reasonable time,” is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(3). The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which OAH shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time. OAR 471-040-0041(4). Per OAR 471-040-0041(b)(A), good cause does not include “[f]ailure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal.”

Orders No. 24-UI-252570 and 24-UI-252567, dismissing claimant’s requests for hearing due to their failure to appear, were issued on April 18, 2024. Therefore, the requests to reopen the April 18, 2024, hearings were due by May 8, 2024. Because claimant’s requests to reopen the hearings were filed on August 12, 2024, the requests were late.

The late requests to reopen were filed as an additional request for hearing, and therefore did not contain an explanation for why the requests to reopen were filed late or why claimant missed the hearings. Order No. 24-UI-268072, Exhibit 5 at 1-3; Order No. 24-UI-268078, Exhibit 5 at 1-3. That claimant filed the requests in this manner raises the possibility that claimant may not have received Orders No. 24-UI-252570 and 24-UI-252567 and may not have known that the hearings had taken place. However, claimant wrote in the statement accompanying their applications for review, “I failed to appear at my hearing because I didn’t receive the mail in time because I was going through a move and lots of other personal things.” EAB Exhibit 1 at 2.

That claimant filed timely applications for review of Orders No. 24-UI-268072 and 24-UI-268078 using forms provided with those orders suggests that claimant was able to timely receive mail sent to the Clackamas address through at least early October 2024. The notices of hearing and Orders No. 24-UI-252570 and 24-UI-252567 had also been sent to that address in April 2024. Claimant did not specifically assert that they failed to timely receive Orders No. 24-UI-252570 and 24-UI-252567, even though claimant implied that they did not receive the hearing notices until after the April 18, 2024, hearings. EAB Exhibit 1 at 2. Further, to the extent claimant may not have timely received documents in April 2024 due to moving without updating their address with OAH, this was a circumstance that did not constitute good cause under the rule if it prevented timely filing, since claimant knew or should have known of a pending appeal at that time. The record therefore does not show what factors, if any, prevented claimant from filing a request to reopen by the May 8, 2024, deadline that could have amounted to good cause under the rule. Accordingly, good cause to extend the filing deadline has not been shown. Furthermore, even if good cause had been shown, the record is silent as to when the factors that prevented timely filing ended, and therefore whether claimant’s August 12, 2024, request that was construed as late requests to reopen was filed within a seven-day “reasonable time” thereafter.

For these reasons, claimant’s late requests to reopen the April 18, 2024, hearings are denied. Orders No. 24-UI-252570 and 24-UI-252567 remain undisturbed.

DECISION: Orders No. 24-UI-268072 and 24-UI-268078 are affirmed.

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

DATE of Service: October 30, 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, go to <https://unemployment.oregon.gov/overpayments> or call 503-947-1995.

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.

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 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.

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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

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.