

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0822

Late Application for Review Dismissed

PROCEDURAL HISTORY: On August 2, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause, disqualifying claimant from receiving benefits effective June 9, 2024 (decision # L0005479852).¹ Claimant filed a timely request for hearing. On October 30, 2024, ALJ Bender conducted a hearing, and on November 7, 2024, issued Order No. 24-UI-272606, affirming decision # L0005479852. On November 27, 2024, Order No. 24-UI-272606 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On December 2, 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 the statement included with claimant's late application for review, has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit will remain in the record.

FINDINGS OF FACT: (1) Order No. 24-UI-272606, mailed to claimant on November 7, 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. . . If you have questions, please refer to the enclosed publication 'Rights of Review of a Hearing Decision' (UI Pub 15). If you did not receive a copy of 'Rights of Review of a Hearing Decision' with this decision, call the Office of Administrative Hearings at 1-800-311-3394 to request a copy." Order No. 24-UI-272606 at 4. Order No.

¹ Decision # L0005479852 stated that claimant was denied benefits from June 9, 2024, through July 5, 2025. However, decision # L0005479852 should have stated that claimant was disqualified from receiving benefits beginning Sunday, June 9, 2024, and until she earned four times her weekly benefit amount. See ORS 657.176.

24-UI-272606 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before November 27, 2024, to be timely.”

(2) Claimant received Order No. 24-UI-272606 before November 27, 2024, but did not receive or did not notice the form “Application for Review” enclosed with the order. Claimant initially believed that the form was required to file an application for review.

(3) On December 2, 2024, claimant filed a late application for review by faxing a letter to EAB.

CONCLUSIONS AND REASONS: Claimant’s late application for review is 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).

OAR 471-040-0060 (May 13, 2019) provides:

(1) An application for review may be filed on forms provided by OAH or the Employment Department and other similar offices in other states. Use of the form is not required, provided the applicant requests review of a specific ALJ Order, or otherwise expresses intent to appeal an ALJ Order.

(2) An application for review may be filed in person, or by mail, fax, or electronic means to EAB, or any office of the Employment Department, including OAH, or any Employment Security Agency in any other state or jurisdiction where the applicant is claiming benefits.

* * *

The application for review of Order No. 24-UI-272606 was due by November 27, 2024. Claimant’s application for review was filed on December 2, 2024, and was therefore late. Claimant wrote in her statement included with the application for review, “I have been unable to find an official form as there was nothing included in the decision letter I received.” EAB Exhibit 1 at 2. It can reasonably be inferred that from this claimant received Order No. 24-UI-272606 prior to the timely filing deadline, but failed to file an application for review by the deadline because she did not receive, or did not notice, the form “Application for Review” enclosed with the order.

If Order No. 24-UI-272606 failed to include an “Application for Review” form, this was a circumstance beyond claimant’s reasonable control. However, it was not a circumstance that prevented timely filing. Under OAR 471-040-0060(1), use of that form is not required to file an application for review. Claimant ultimately filed a late application for review by faxing a letter to EAB on December 2, 2024. EAB

Exhibit 1 at 1-2. This suggests that claimant discovered on her own that the form was not required and that filing by fax was permitted. The record does not show it was beyond claimant's reasonable control to discover that before the timely filing deadline, particularly since detailed information regarding the appeals process (UI Pub 15) was included with the order under review, and instructions on how to obtain that information by phone if UI Pub 15 was missing were also stated within the order. Accordingly, claimant has not demonstrated that circumstances beyond her reasonable control prevented timely filing of the application for review, and therefore has not shown good cause to extend the filing deadline.

For these reasons, claimant's application for review was filed late without good cause and is therefore dismissed.

DECISION: The application for review filed December 2, 2024 is dismissed. Order No. 24-UI-272606 remains undisturbed.

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

DATE of Service: December 26, 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 stated above**. See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under "File a Petition for Judicial Review." You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have 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، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

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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.