

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0824

Late Application for Review Dismissed

PROCEDURAL HISTORY: On May 10, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective March 24, 2024, and that claimant received \$2,536 in benefits to which she was not entitled and must repay (decision # L0004054574). Claimant filed a timely request for hearing. On September 19 and 20, 2024, ALJ Monroe conducted a hearing, and on October 11, 2024, issued Order No. 24-UI-269111, affirming decision # L0004054574.¹ On October 31, 2024, Order No. 24-UI-269111 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On December 3, 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(s) will remain in the record.

WRITTEN ARGUMENT: EAB did not consider claimant's argument on the merits of Order No. 24-UI-269111 because the argument is not relevant and material to EAB's determination of whether her late application for review should be allowed. *See* ORS 657.275(2) and OAR 471-041-0090(1)(b)(A) (May 13, 2019).

¹ Order No. 24-UI-269111 stated that it modified decision # L0004054574 because it made different conclusions regarding non-substantive parts of the decision. However, the order made no changes to the effective date of disqualification or the amount of overpaid benefits and authorized method of recovery, and therefore affirmed decision # L0004054574.

FINDINGS OF FACT: (1) Order No. 24-UI-269111, mailed to claimant on October 11, 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 this decision is mailed.” Order No. 24-UI-269111 at 6. Order No. 24-UI-269111 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before October 31, 2024, to be timely.” Claimant received Order No. 24-UI-269111 before October 31, 2024.

(2) On October 14, 2024, the Department issued decision # L0006607870, apparently as a result of Order No. 24-UI-269111 being issued, which contained the same conclusions as the order under review regarding the work separation and overpayment. Decision # L0006607870 erroneously stated that claimant had the right to request a hearing by November 4, 2024.²

(3) On November 14, 2024, a Department representative noted, “Claimant wants to re-appeal denial of her previous appeal.” Per another note on November 20, 2024, claimant’s appeal request was “discard[ed]” because she already had a hearing in the matter. Claimant had additional contacts with the Department regarding her desire to appeal through the end of November 2024.³

(4) On December 3, 2024, claimant filed a late application for review of Order No. 24-UI-269111 with 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).

The application for review of Order No. 24-UI-269111 was due by October 31, 2024. Because claimant’s application for review was filed on December 3, 2024, it was late.

The Department’s records show that on October 14, 2024, an administrative decision was issued with the same conclusions as the order under review. Though claimant had no right to request a hearing on this administrative decision, it erroneously stated that claimant had the right to request a hearing by

² EAB has taken notice of these facts which are contained in Employment Department records. OAR 471-041-0090(1). 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 noticed fact(s) will remain in the record.

³ EAB has taken notice of these facts which are contained in Employment Department records. OAR 471-041-0090(1). 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 noticed fact(s) will remain in the record.

November 4, 2024. Claimant wrote in the statement included with her late application for review, “I just received the instructions last Friday from the Unemployment Frances Department to send this information to your office. I had sent it to the Frances Division.” EAB Exhibit 1 at 1. Additionally, the Department’s records show that on November 15, 2024, claimant requested a hearing on decision # L0006607870, and that request was later discarded by the Department because claimant already had a hearing on the matter. It is reasonable to infer from these circumstances that claimant mistakenly believed that she had the option of requesting another hearing on the matter by November 4, 2024, as an alternative to filing an application for review of Order No. 24-UI-269111 with EAB. Given the Department’s error in issuing decision # L0006607870, this was an excusable mistake that prevented timely filing of an application for review. Good cause therefore exists to extend the filing deadline.

However, this factor that prevented timely filing ended on November 4, 2024, the deadline stated in decision # L0006607870 to pursue what claimant mistakenly believed was an alternate avenue of appeal. The Department’s records show that claimant requested a hearing on decision # L0006607870 on November 14, 2024. Even if this request were construed as a late application for review of Order No. 24-UI-269111, it would have been filed more than seven days after the factors that prevented timely filing ended, and was therefore not filed within a “reasonable time.” Claimant’s subsequent attempts to appeal, including the December 3, 2024, late application for review before EAB, were therefore also not filed within a reasonable time. Accordingly, claimant’s late application for review is dismissed.

DECISION: The application for review filed December 3, 2024 is dismissed. Order No. 24-UI-269111 remains undisturbed.

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

DATE of Service: December 27, 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.

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**

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>. 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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