

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0830

Late Application for Review Dismissed

PROCEDURAL HISTORY: On August 29, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct, disqualifying claimant from receiving benefits effective July 14, 2024 (decision # L0005812829).¹ Claimant filed a timely request for hearing. On November 4, 2024, ALJ Micheletti conducted a hearing, and on November 8, 2024, issued Order No. 24-UI-272659, reversing decision # L0005812829 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On December 2, 2024, Order No. 24-UI-272659 became final without any party having filed an application for review with the Employment Appeals Board (EAB). On December 4, 2024, claimant filed a late application for review of Order No. 24-UI-272659 with EAB.

WRITTEN ARGUMENT: Claimant submitted written arguments on December 6, 17, and 19, 2024. Claimant did not declare that she provided a copy of her arguments to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The arguments also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB did not consider claimant's December 6, 17, and 19, 2024 written arguments when reaching this decision. *See* ORS 657.275(2).

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 written statement filed with claimant's late application for review, has been marked as EAB Exhibit 1, and 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.

¹ Decision # L0005812829 stated that claimant was denied benefits from July 14, 2024, to August 9, 2025. However, decision # L0005812829 should have stated that claimant was disqualified from receiving benefits beginning Sunday, July 14, 2024, and until she earned four times her weekly benefit amount. *See* ORS 657.176.

OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit(s) will remain in the record.

FINDING OF FACT: (1) Order No. 24-UI-272659, mailed to claimant on November 8, 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-272659 at 4. Order No. 24-UI-272659 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before December 2, 2024, to be timely.” On December 4, 2024, claimant filed a late application for review of Order No. 24-UI-272659 with EAB.

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 24-UI-272659 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-272659 was due by December 2, 2024. Because claimant did not file their application for review until December 4, 2024, the application for review was late. Claimant provided a written statement with the application for review. However, claimant’s written statement did not describe circumstances preventing her from filing the application for review on time. Accordingly, claimant did not show good cause for the late application for review, and claimant’s late application for review is dismissed.

Claimant should also note that the ALJ’s order for which she filed an application for review, Order No. 24-UI-272659, was fully favorable to her. Order No. 24-UI-272659 concluded that claimant was not disqualified from receiving benefits based on the work separation from the employer in this case. Claimant alleged no facts entitling claimant to further relief in this matter, and no further relief can be offered. Accordingly, there is no justiciable controversy before EAB based upon claimant’s application for review, and even if it were timely, claimant’s appeal would be subject to dismissal for failing to present a justiciable controversy.

For these reasons, claimant’s late application for review of Order No. 24-UI-272659 is dismissed.

DECISION: The application for review filed December 4, 2024 is dismissed. Order No. 24-UI-272659 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.

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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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