

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0078

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On August 9, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective February 28, 2021 (decision # 100927). On August 30, 2021, decision # 100927 became final without claimant having filed a request for hearing. On September 24, 2021, the Department served notice of an administrative decision, based in part on decision # 100927, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$510 in regular unemployment insurance (regular UI) benefits, \$4,790 in Extended Benefits (EB), \$9,101 in Pandemic Emergency Unemployment Compensation (PEUC) benefits, and \$6,600 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department, a \$4,200.20 monetary penalty, and a 52-week penalty disqualification from future benefits. On October 14, 2021, the September 24, 2021, administrative decision became final without claimant having filed a request for hearing. On October 20, 2022, claimant filed late requests for hearing on decision # 100927 and the September 24, 2021, administrative decision.

ALJ Kangas considered claimant's requests, and on February 16, 2023, issued Orders No. 23-UI-216210 and 23-UI-216212, dismissing claimant's requests for hearing on decision # 100927 and the September 24, 2021, administrative decision, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by March 2, 2023. On March 4, 2023, claimant filed a late

response to the appellant questionnaire and timely applications for review of Orders No. 23-UI-216210 and 23-UI-216212 with the Employment Appeals Board (EAB).

On September 18, 2023, EAB issued EAB Decisions 2023-EAB-0992 and 2023-EAB-0994 reversing Orders No. 23-UI-216210 and 23-UI-216212 and remanding for hearings on whether claimant's late requests for hearing should be allowed and, if so, the merits of decisions # 100927 and the September 24, 2021, administrative decision. On November 17, 2023, and continued to December 6, 2023, ALJ Adamson conducted a hearing on decision # 100927. On December 6, 2023, ALJ Adamson conducted a hearing on the September 24, 2021, administrative decision.

On December 8, 2023, ALJ Adamson issued Order No. 23-UI-243060, allowing claimant's late request for hearing on decision # 100927 and affirming that administrative decision, and Order No. 23-UI-243068, dismissing claimant's request for hearing on the September 24, 2021, administrative decision as late without good cause and leaving the September 24, 2021, administrative decision undisturbed. On December 28, 2023, Orders No. 23-UI-243060 and 23-UI-243068 became final without claimant having filed applications for review with EAB. On February 2, 2025, claimant filed late applications for review of Orders No. 23-UI-243060 and 23-UI-243068 with EAB.¹

EAB combined its review of Orders No. 23-UI-243060 and 23-UI-243068 under OAR 471-041-0095 (October 29, 2006). For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2025-EAB-0079 and 2025-EAB-0078).

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 claimant included with her application for review that describes the circumstances that prevented a timely filing of the application for review. The written statement has been marked as EAB Exhibit 2, 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, saying 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.

¹ Note that, along with decision # 100927 and the September 24, 2021, administrative decision, claimant also filed a late request for hearing on decision # 85851, a decision that determined claimant had been discharged for misconduct and was disqualified from receiving benefits effective November 1, 2020. On February 16, 2023, ALJ Kangas issued Order No. 23-UI-216211, which dismissed the hearing request on decision # 85851 as late subject to claimant's right to renew by responding to an appellant questionnaire. Claimant filed a late appellant questionnaire and a timely application for review of that matter, and EAB consolidated that appeal with claimant's appeals of decision # 100927 and the September 24, 2021, administrative decision. On September 18, 2023, EAB issued EAB Decision 2023-EAB-0993, remanding for a hearing on whether claimant's late request for hearing on decision # 85851 should be allowed and, if so, the merits of the decision. On November 17, 2023, ALJ Adamson held a hearing in the matter, and on November 22, 2023, issued Order No. 23-UI-241858, allowing claimant's late request for hearing and reversing decision # 85851 by concluding that claimant was discharged, but not for misconduct and therefore was not disqualified from receiving benefits based on the work separation. Although EAB had previously consolidated its review of the discharge matter with review of decision # 100927 and the September 24, 2021, administrative decision, because Order No. 23-UI-241858 was favorable to claimant, EAB did not construe her February 2, 2025, filing as a late application for review of that order.

FINDINGS OF FACT: (1) Order No. 23-UI-243060, mailed to claimant on December 8, 2023, 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. 23-UI-243060 at 4. Order No. 23-UI-243060 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before December 28, 2023, to be timely.”

(2) Order No. 23-UI-243068, mailed to claimant on December 8, 2023, 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. 23-UI-243068 at 3. Order No. 23-UI-243068 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before December 28, 2023, to be timely.”

(3) On December 28, 2023, Orders No. 23-UI-243060 and 23-UI-243068 became final without claimant having filed applications for review with EAB.

(4) After Orders No. 23-UI-243060 and 23-UI-243068 were issued, claimant became unhoused and unable to file applications for review by the December 28, 2023, deadline because she was “with out a home struggling to find and get a roof over [her] and [her] child’s head to be safe and stable.” EAB Exhibit 2 at 1.

(5) On January 1, 2025, claimant’s circumstances improved to the degree that she was no longer prevented from filing applications for review on Orders No. 23-UI-243060 and 23-UI-243068.

(6) On February 2, 2025, claimant filed late applications for review of Orders No. 23-UI-243060 and 23-UI-243068 with EAB.

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 23-UI-243060 and 23-UI-243068 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 applications for review of Orders No. 23-UI-243060 and 23-UI-243068 were due by December 28, 2023. Because claimant did not file her applications for review until February 2, 2025, the applications for review were late.

In claimant’s written statement, claimant advised that she was unable to file applications for review of Orders No. 23-UI-243060 and 23-UI-243068 by the December 28, 2023, deadline because she had become unhoused. The difficulties presented by not having housing are circumstances that would

prevent timely appeal of the orders and, though claimant offered few details about how her lack of housing came about, it is reasonable to infer that claimant's housing insecurity was beyond her reasonable ability to control or avoid.

However, the circumstances that prevented claimant from filing in a timely manner ended on January 1, 2025, because on that date her circumstances improved to the degree that she was no longer prevented from filing applications for review. EAB Exhibit 2 at 1. Claimant filed her late applications for review more than seven days later, on February 2, 2025. Therefore, claimant failed to file within a seven-day "reasonable time" after the circumstances that prevented the timely filing ceased to exist.

Accordingly, while good cause to extend the deadline to file applications for review of Orders No. 23-UI-243060 and 23-UI-243068 may have existed, claimant failed to file her applications for review within a reasonable time. Therefore, claimant's late applications for review are dismissed.

DECISION: The applications for review filed February 2, 2025 is dismissed. Orders No. 23-UI-243068 and 23-UI-243068 remain undisturbed.

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

DATE of Service: March 5, 2025

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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