

# OFFICE OF ADMINISTRATIVE HEARINGS RIGHTS OF REVIEW OF A HEARING DECISION

## **I missed the hearing, no hearing was held and my appeal was dismissed. What can I do?**

You can ask that the case be reopened to tell your side. The administrative law judge (ALJ) will reopen your case only if you show good cause for not being at the hearing. You must request reopening in writing promptly after you know of the decision. "Promptly" means as soon as possible, depending on the facts of your case. To ask for a reopening, send or deliver a letter to the Office of Administrative Hearings, PO Box 14020, Salem OR 97309, and explain why you did not attend the hearing.

## **I missed the hearing, it was held without me and the hearing decision was not in my favor. What can I do?**

You can do either or both of the following:

1. You can ask that the case be reopened to tell your side. Please see instructions above.
2. You can appeal it to the Employment Appeals Board. The appeal is called an Application for Review.

## **How do I make an Application for Review?**

An application for review may be filed in person, by mail or by fax to the Employment Appeals Board listed below, or to any office of the Employment Department. An Application for Review must:

- a) Be in writing, and readable;
- b) State that the applicant requests the Employment Appeals board review of a Hearing Decision and identify the Hearing Decision reference number or mailing date for which review is requested;
- c) Specify the claimant's name;
- d) Specify the applicant's current mailing address;
- e) Specify the applicant's name or the name of the applicant's representative; and
- f) Specify if the applicant intends to file a written argument.

## **What is the deadline for an "Application for Review"?**

You have 20 days from the date the hearing decision was mailed to make an "Application for Review". The mailing date is on the upper right-hand corner of the hearing decision. Your "Application for Review" must be postmarked or delivered to an Employment Department office or the Employment Appeals Board by the 20th day after the date of mailing or before the date listed as "Decision Final" on the hearing decision.

If you miss the deadline, your "Application for Review" will not be accepted unless you have good cause for being late, and unless you act within a reasonable time. On the reverse side of this form, Rule OAR 471-041-070 says what good cause and a reasonable time mean for a late "Application for Review". If your "Application" is late, be sure to give the reasons for being late in the letter you send to the Employment Appeals Board or on the form you fill out at the Employment Department.

## **Whom may I call for questions about an "Application for Review" or a reopening?**

For questions about an "Application for Review", call the Employment Appeals Board. For questions about reopening, call the Office of Administrative Hearings.

The Employment Department is an equal opportunity program and as such does not discriminate in the provision of its services (its employment practices) on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief or marital status. Auxiliary aids and services are available upon request to individuals with disabilities. Contact the Office of Administrative Hearings at (503) 947-1515 voice or dial 711 for TDD/TTY for assistance.

If all telephone numbers listed above are long-distance, please call toll-free (within Oregon) 1-800-311-3394.

**THE LAWS AND RULES ABOUT APPEALS AND REOPENINGS ARE ON THE REVERSE SIDE**

### **EMPLOYMENT APPEALS BOARD**

875 Union Street NE  
Salem, OR 97311  
Phone: (503) 378-2077  
1-800-734-6949  
FAX: (503) 378-2129  
TDD: 711

### **OFFICE OF ADMINISTRATIVE HEARINGS**

PO Box 14020  
Salem, OR 97309-4020  
Phone: (503) 947-1515  
FAX: (503) 947-1531  
800-311-3394  
TDD: 711

# Excerpts from Laws and Administrative Rules Governing Review of a Hearing Decision

## LAWS

### ORS 657.270 \*\*\* application for review.\*\*\*

[4] Unless the director or any other party to the hearing, within 20 days after the delivery of such notification [of the hearing decision], or if mailed, within 20 days after the same was mailed to the party's last-known address, files with the Employment Appeals Board an application for review, such decision shall be final.

### ORS 657.275 Review by Employment Appeals Board.

(1) If the Director of the Employment Department or any interested party files with the Employment Appeals Board a timely application for review, the board shall promptly affirm, modify or set aside the decision of the administrative law judge. The board shall promptly notify the claimant and any other interested party of its decision. If the board finds that additional evidence is required to reach a decision, it may remand the matter

to an administrative law judge to conduct a hearing to obtain additional evidence in the matter. The board shall promptly notify the claimant and any other interested party of such action. The administrative law judge may either make a new decision based on the additional and original evidence or forward the additional evidence to the board for a decision. If the administrative law judge issues a new decision, it shall be subject to review in accordance with the provisions of ORS 657.270(4).

### ORS 657.875 Extending period for appeal in certain claim and contribution matters.

The period within which an interested party may \*\*\* file with the Employment Appeals Board an application for review as provided in ORS \*\*\* 657.270 \*\*\* may be extended, upon a showing of good cause therefor, a reasonable time under the circumstances of each particular case.

## RULES

### OAR 471-040-0040 Reopening of a Case

- (1) After service of an administrative law judge's decision as set forth in ORS 657.270, an administrative law judge may reopen the case at any time if the party:
  - (a) Requesting the reopening failed to appear at the hearing;
  - (b) Makes, in writing to the administrative law judge promptly after gaining knowledge of the decision, a request to reopen; and
  - (c) Has good cause for failing to appear at the hearing.
- (2) Good cause for the purpose of subsection (1)(c) exists when:
  - (a) Notice of hearing was not personally delivered or mailed to the party or party's authorized agent at the last known address as shown by the Employment Department record; or
  - (b) The circumstances causing the failure to appear are beyond the reasonable control of the party.
- (3) The administrative law judge ruling on a request to reopen the case shall be in writing and served upon the parties.
- (4) The Office of Administrative Hearings will treat as a request to reopen the hearing any application for review that a party files with the Employment Appeals Board or the Employment Department, where the filing party failed to appear at the hearing that led to the decision on appeal, unless the applicant specifically states in the application that the applicant does not wish to have the case reopened. In the event that the Office of Administrative Hearings subsequently denies the request to reopen the hearing, it shall return the case to the Employment Appeals Board, which will then proceed to review the merits of the substantive decision. The original application for review shall serve as the basis for the Employment Appeals Board's review of the merits of that decision.
- (5) This rule is effective for all hearings held under OAR chapter 471, division 040 after the effective date of this rule (ef. 8-1-04).

### OAR 471-041-0060 Application for Review

- (1) A party, or the party's authorized representative, \*\*\* may file an Application for Review. An Application for Review shall:
  - (a) Be in writing, and in legible form;
  - (b) Explicitly state that the applicant requests EAB review of a Hearing Decision and identify the Hearing Decision for which review is requested.
  - (c) Specify the claimant's name;
  - (d) Specify the applicant's current mailing address;
  - (e) Specify the applicant's name or the name of the applicant's representative;
  - (f) Specify if the applicant intends to file a written argument; and
- (2) An application for review may be filed in person, by mail or by fax to the office of the EAB or to any office of the Employment Department. An Application for Review may be filed in person or by mail to any Employment Security Agency in any other state or jurisdiction where the claimant is claiming benefits.
- (3) If filed by mail, the application must be properly addressed and bear sufficient postage.
- (4) If faxed, the application must be received by 5:00 p.m. The EAB will not accept faxed documents after 5:00 p.m. on any business day, nor will the EAB accept documents faxed on Saturdays, Sundays or legal holidays.  
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### OAR 471-041-0070 Late Application for Review

- \*\*\* (2)(a) "Good cause" exists when factors or circumstances beyond the reasonable control of the applicant, or the applicant's agent, caused the late filing.
- (b) In addition to showing that good cause existed for the delay, the applicant must establish that the application for review was filed within a "reasonable time." A reasonable time is the time it takes to promptly file an application for review after the reasons or circumstances for the delay have ceased to exist. \*\*\*

### OAR 471-041-0080 Presentation of Argument

- (1) An applicant may present written argument only if the applicant has stated that intention at the time of filing an Application for Review or within 20 days of the date the Employment Department mailed the Hearing Decision for which review is sought. A respondent may give notice of intent to present written argument, irrespective of whether the applicant has stated such intent. To do so, a respondent must submit written notice of intent within 10 days of the date that the EAB mails its acknowledgment of the Application for Review, as provided in OAR 471-041-0075. If a respondent files a timely notice of intent to present written argument, the applicant shall be permitted to present written argument as well at the time designated by the EAB. See OAR 471-041-0075.
- (2) No party is required to submit written argument. No party shall be penalized in any way for failing to submit written argument, even after having specified an intent to do so.
- (3) All written arguments shall be legible and submitted in a form capable of being photocopied. A party shall send a true and accurate copy of any written argument to the other parties at the same time the argument is filed with the EAB. The party filing the written argument must certify on the argument that true copies have been sent to all other parties.
- (4) Parties may file written arguments with the EAB by mail, by personal service or by fax. The EAB must receive the written arguments within the time limit established by the EAB in correspondence with the parties. See OAR 471-041-0075. Written arguments submitted by fax must be directed exclusively to the office of the EAB, unless otherwise specifically directed or approved by the EAB.
- (5) The EAB does not allow responsive briefing.
- (6) The EAB will not consider written arguments that do not comply with these rules.
- (7) Upon request, or upon its own initiative, the EAB may extend the time period for filing written arguments. Such action shall occur solely within the discretion of the EAB. Under no circumstances will a request for extension of time to file a written argument be granted for more than 14 days from the original date set for filing written argument.

### OAR 471-041-0120 Withdrawals

At any time prior to the date upon which the EAB enters its decision, an applicant may request, in writing, that the application for review be withdrawn. Upon receiving such a written request for withdrawal, the EAB shall dismiss the application for review.