

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0466

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On February 4, 2021, the Oregon Employment Department (the Department) served a Notice of Determination of Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible for PUA benefits effective February 2, 2020. On February 24, 2021, the February 4, 2021 administrative decision became final without claimant having filed a request for hearing. On March 10, 2021, claimant filed a late request for hearing on the February 4, 2021 administrative decision. ALJ Kangas considered claimant's request, and on April 5, 2021 issued Order No. 21-UI-164147, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 19, 2021. On April 18, 2021, claimant filed a timely response to the appellant questionnaire. On April 29, 2021, the Office of Administrative Hearings (OAH) served notice on claimant that Order No. 21-UI-164147 was vacated, and that a hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing on the February 4, 2021 administrative decision and, if so, the merits of that decision. On May 28, 2021, ALJ Monroe conducted a hearing, and on June 2, 2021 issued Order No. 21-UI-167965, re-dismissing claimant's request for hearing as late without a showing of good cause and leaving the February 4, 2021 administrative decision undisturbed. On June 13, 2021, claimant filed a timely application for review of Order No. 21-UI-167965 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. The new information was also not relevant and material to the determination of whether claimant had good cause to file the late request for hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

The parties may offer new information such as the information contained in claimant's written argument, which pertains to the merits of the February 4, 2021 administrative decision, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to

provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

CONCLUSIONS AND REASONS: Order No. 21-UI-167965 is set aside and this matter remanded for further development of the record to determine whether claimant's late request for hearing on the February 4, 2021 administrative decision should be allowed and, if so, the merits of that decision.

ORS 657.269 provides that the Department's decisions become final unless a party files a request for hearing within 20 days after the date the decision is mailed. ORS 657.875 provides that the 20-day deadline may be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010 (February 10, 2012) provides that "good cause" includes factors beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors ceased to exist.

The request for hearing on the February 4, 2021 was due by February 24, 2021. Because claimant did not file his request for hearing until March 10, 2021, the request was late. The order under review concluded that because claimant "offered conflicting testimony regarding whether and when he received the decision, as well as the circumstances that resulted in the untimely filing of his appeal," he failed to demonstrate that he was "precluded from filing his appeal within the specified time period due to excusable mistake or circumstances beyond his reasonable control," and therefore did not show that he had good cause for filing the late request for hearing. Order No. 21-UI-167965 at 3. Although the record supports the finding that claimant gave conflicting testimony regarding why he filed the late request for hearing, further inquiry is needed to conclude whether he did so with good cause.

On his appellant questionnaire response and in his testimony at hearing, claimant offered multiple conflicting accounts of when he received the February 4, 2021 administrative decision, variously stating that he never received it; that he received it around February 12, 2021; or else that he received it when he returned from a trip to Arizona, the timing of which he was uncertain. Exhibit 4 at 3; Transcript at 14, 20. Claimant also testified that he has short-term memory loss and ADHD, that those conditions made it difficult for him to recall dates, and that he did not know when he received the administrative decision. Transcript at 18. Additionally, claimant testified that he had been houseless at the time the administrative decision was served on him, that it was mailed to an address that he had not lived at for over seven years but sometimes used, and that he sometimes did not get his mail because the people living there did not like him. Transcript at 20. Claimant also testified that his phone had been shut off, and that when he called the Department on February 16, 2021, he offered his brother's phone number as a contact number, but that phone was also disconnected. Transcript at 22.

The record shows that a representative from the Department left a voicemail for claimant on February 8, 2021 which contained information about the February 4, 2021 administrative decision and how to appeal it if he disagreed with it. Transcript at 6-7. On remand, inquiry should be directed towards claimant as to whether he received that voicemail; if so, what specifically was stated in the voicemail; and why, if he did receive the voicemail, he did not appeal the February 4, 2021 administrative decision upon receiving the voicemail. Further, the record shows that claimant's call to the Department on February 16, 2021

was for the purpose of inquiring about eligibility for regular unemployment insurance benefits.¹ When the ALJ asked claimant why he did not request a hearing on the February 4, 2021 administrative decision during that phone call, claimant testified that he “[felt] like [he] did [to] the best of [his] knowledge.” Transcript at 22. On remand, the ALJ should ask claimant what specifically prompted him to contact the Department on February 16, 2021 and what he stated to the Department representative during the February 16, 2021 phone call. The ALJ should also inquire as to what prompted claimant to submit a request for hearing on March 10, 2021 rather than some prior date, when claimant’s brother’s phone was disconnected, and what efforts, if any, claimant made to check his mail while he was houseless.

Finally, claimant indicated during the hearing that he would be able to look up the dates of his trip to Arizona, but then became argumentative when the ALJ offered him time to do so, and declined to look up the information. Transcript at 26–27. Because the record suggests that claimant may have failed to file a timely request for hearing because he was in Arizona at the time the February 4, 2021 administrative decision was delivered, the ALJ should, on remand, permit the claimant to offer testimony regarding the timing of the trip. The ALJ should also inquire as to the reason that claimant had travelled to Arizona, whether he had made arrangements for someone to monitor or open his mail while he was gone, had otherwise notified the person receiving his mail that he was expecting correspondence from the Department, or else that he either was or could have been informed about the delivery of the February 4, 2021 administrative decision while he was gone. If claimant was informed of the administrative decision while he was in Arizona, the record should also be developed to show whether claimant made any efforts to file a request for hearing while he was in Arizona, including whether his wife or any other person he was travelling with had a phone he could have used to contact the Department.

To the extent that any of the above inquiry shows that claimant may have failed to file a timely request for hearing due to circumstances beyond his control or an excusable mistake, the ALJ should also ask questions to determine whether claimant filed his late request for hearing within a reasonable period of time after those circumstances factors to exist.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); see *accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant had good cause to file the late request for hearing, Order No. 21-UI-167965 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-167965 is set aside, and this matter remanded for further proceedings consistent with this order.

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

¹ The February 4, 2021 administrative decision determined that claimant was ineligible for PUA benefits because he was eligible for a regular claim, extension, or extended benefits. Exhibit 1 at 1.

DATE of Service: July 9, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-167965 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 desisyong ito.

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

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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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