

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0774

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On February 18, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA effective March 15, 2020. On March 10, 2021, the February 18, 2021 PUA determination became final without claimant having filed a request for hearing. On April 9, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on April 30, 2021 issued Order No. 21-UI-165936, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 14, 2021. On May 10, 2021, claimant filed a timely response to the appellant questionnaire. On July 20, 2021, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 21-UI-165936 was vacated. On August 17, 2021, OAH mailed notice of a hearing scheduled for September 3, 2021 to consider whether claimant's late request for hearing should be allowed and, if so, the merits of the February 18, 2021 PUA determination. On September 3, 2021, ALJ Janzen conducted a hearing, and on September 8, 2021 issued Order No. 21-UI-174182, re-dismissing claimant's request for hearing as late without good cause, leaving the February 18, 2021 PUA determination undisturbed. On September 28, 2021, claimant filed an application for review of Order No. 21-UI-174182 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) The Department mailed the February 18, 2021 PUA determination to claimant's address of record with the Department. The PUA determination stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by March 10, 2021." Exhibit 1 at 2.

(2) During 2021, the Department's mail took approximately ten days to arrive at claimant's address. Claimant received the February 18, 2021 PUA determination in her mail on March 7, 2021. Claimant read the PUA determination and disagreed with it. In reading the appeal rights on the decision, claimant understood that she had 20 days to request a hearing, but claimant was uncertain which date on the

decision to use to determine the 20 days, or if she had 20 days from receiving the decision to request a hearing.

(3) Sometime between March 7, 2021 and March 22, 2021, claimant attempted to request a hearing by sending an email to the Department. On March 23, 2021, claimant spoke with a Department representative on the telephone about her claim for PUA benefits. Claimant asked if the Department had a record of claimant's request for hearing. The representative told claimant that she should refile her request for hearing "using other avenues" because the representative did not see a record of a request for hearing. Transcript at 14. The Department representative also told claimant that she initially filed for PUA using an incorrect social security number, and that she should send the correct personal information to the Department.

(4) On April 9, 2021, claimant sent the Department copies of her driver's license and social security number, and a request for hearing on the February 18, 2021 PUA determination. Exhibit 2.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on the February 18, 2021 PUA determination is dismissed.

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 the circumstances that prevented a timely filing ceased to exist.

Claimant's request for hearing on the February 18, 2021 PUA determination was due by March 10, 2021. Because claimant did not file her request for hearing until April 9, 2021, the request was late. Therefore, it is necessary to determine if claimant requested the hearing within a reasonable time upon a showing of good cause to extend the hearing deadline.

Claimant's failed attempt to request a hearing by email to the Department may have been a factor beyond claimant's reasonable control. However, the record shows only that claimant attempted to request a hearing by email sometime between March 7, 2021 and March 22, 2021, and not that claimant attempted to do so before the March 10, 2021 deadline. Absent such a showing, the record fails to establish that claimant's failed attempt to request a hearing by email prevented a timely filing. Claimant's failure to file a timely request for hearing also was not an "excusable mistake" within the meaning of the administrative rules, because it does not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Claimant therefore failed to establish good cause for failing to file a timely request for hearing on the February 18, 2021 PUA determination. However, even if claimant had established good cause, the outcome of this decision would remain the same. On March 23, 2021, claimant spoke with a Department representative who told claimant that the Department did not have a hearing request from claimant, and that she should refile the request. At that time, any factors beyond an applicant's reasonable control that may have prevented claimant from filing a timely request for hearing ceased to exist. However, claimant

did not file a request for hearing until April 9, 2021, which was not within a reasonable time, seven days, from March 23, 2021, the date claimant learned she still needed to file a request for hearing.

Claimant's late request for hearing on the February 18, 2021 PUA determination therefore is dismissed. The February 18, 2021 PUA determination remains undisturbed.

DECISION: Order No. 21-UI-174182 is affirmed.

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

DATE of Service: October 27, 2021

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 listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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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

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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