

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0509

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On February 10, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was entitled to receive PUA benefits effective March 1, 2020, if otherwise eligible, with a weekly benefit amount of \$205. On March 2, 2021, the PUA determination became final without claimant having filed a request for hearing. On September 12, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on September 20, 2021 issued Order No. 21-UI-175116, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 4, 2021. On October 4, 2021, claimant filed a timely response to the appellant questionnaire. On January 18, 2022, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 21-UI-175116 was vacated and that a hearing would be scheduled to determine whether claimant's late request for hearing should be allowed, and if so, the merits of the PUA determination. On March 10, 2022, the Office of Administrative Hearings (OAH) served notice that the hearing was scheduled for March 25, 2022. On March 25, 2022, ALJ Monroe conducted a hearing, and on April 7, 2022 issued Order No. 22-UI-190831, dismissing claimant's request for hearing as late without good cause, leaving the PUA determination undisturbed. On April 27, 2022, claimant filed an application for review of Order No. 22-UI-190831 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 her from offering the information during the 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.

FINDINGS OF FACT: (1) Claimant resides on a property that accommodates four separate mobile homes. Each home has a separate unsecured mailbox located in a central area. The accepted practice is for one of the neighbors to pick up all of the mail from the mailboxes and distribute it in person to each individual resident.

(2) Claimant encountered problems with mail theft in or around early 2021.

(3) On February 10, 2021, the Department mailed a Notice of Determination for PUA to claimant at her address of record with the Department. The notice 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 2, 2021.” Exhibit 1 at 2.

(4) Claimant never received the Notice of Determination for PUA mailed to her on February 10, 2021.

(5) Claimant had phone contact with a Department representative on September 3, 2021. There are no documented references to the PUA determination for the September 3, 2021 phone contact with claimant. Transcript at 6.

(6) On September 8, 2021 the Department documented a “ticket” from claimant regarding why a Weekly Benefit Amount (WBA) redetermination was denied.¹

(7) On or after September 8, 2021, claimant first learned that a decision had been issued by the Department in February 2021.

(8) On September 12, 2021, claimant filed an appeal of the February 10, 2021 PUA determination.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing is allowed. Claimant is entitled to a hearing on the merits of the February 10, 2021 PUA determination.

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.

Claimant’s request for hearing was due by March 2, 2021. Because claimant did not file her request for hearing until September 12, 2021, her request for hearing was late. Claimant never received the administrative decision, which was a factor beyond claimant’s reasonable control. Here, the circumstance preventing a timely filing ceased to exist when claimant learned of the PUA determination and obtained instructions for filing an appeal of the determination.

In her response to the appellant questionnaire, claimant indicated that she did not become aware of the PUA determination until September 10, 2021. Exhibit 4 at 2. At hearing, claimant testified she was unsure of what date she learned of the PUA determination, but it was close to when she filed for an appeal. Transcript at 13. Although claimant had a documented phone contact with a Department

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

representative on September 3, 2021, at hearing the Department representative testified the notes from that contact “just advised the claimant that the WBA stays at 205” and did not reference the PUA determination. Transcript at 6. On September 8, 2021, the Department documented a “ticket” from claimant regarding why a Weekly Benefit Amount redetermination was denied, suggesting that the claimant still was not aware of the PUA determination and her right to appeal.

More likely than not, claimant first learned of the PUA determination on or after September 8, 2021. Claimant filed her request for hearing on September 12, 2021, which was within seven days after she learned of the decision and therefore within a reasonable time. Because claimant established good cause and filed within a reasonable time, her late request for hearing is allowed, and claimant is entitled to a hearing on the merits of the February 10, 2021 administrative decision.

DECISION: Order No. 22-UI-190831 is set aside, as outlined above.

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

DATE of Service: June 2, 2022

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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 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

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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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