

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0606

Reversed & Remanded

PROCEDURAL HISTORY: On October 4, 2021, the Oregon Employment Department (the Department) served notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to receive PUA benefits effective March 15, 2020. On October 25, 2021, the October 4, 2021 administrative decision became final without claimant having filed a request for hearing. On December 14, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on March 7, 2022 issued Order No. 22-UI-187992, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 21, 2022. On March 28, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-187992 with the Employment Appeals Board (EAB). On May 26, 2022, ALJ Kangas mailed a letter to claimant stating that because claimant's response to the appellant questionnaire was late, it would not be considered, another order would not be issued, and Order No. 22-UI-187992 remained in effect. This matter comes before EAB based upon claimant's March 28, 2022 application for review of Order No. 22-UI-187992.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's response to the appellant questionnaire, and has been marked as EAB Exhibit 1 and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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 exhibit will remain in the record.

FINDINGS OF FACT: (1) At a point in time following the onset of the COVID-19 pandemic, claimant filed an application for PUA benefits.

(2) On October 4, 2021, the Department mailed the October 4, 2021 administrative decision to claimant's address of record on file with the Department. The decision stated, in relevant part, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by October 25, 2021." Exhibit 1 at 2.

(3) After they filed their application for PUA benefits, claimant contacted the Department numerous times, including possibly on some occasions after October 4, 2021, and “asked . . . what needed to be done” regarding their claim. Prior to December 14, 2021, the Department did not specifically advise claimant to appeal. EAB Exhibit 1 at 5.

(4) On December 14, 2021, claimant called “for another inquiry and [the Department] stated all [claimant’s] documents were approved by them but [claimant] needed to file an appeal.” EAB Exhibit 1 at 6-7. On that date, with the assistance of a Department representative, claimant requested a hearing on the October 4, 2021 administrative decision. EAB Exhibit 1 at 5.

(5) At some point shortly after March 7, 2022, claimant received Order No. 22-UI-187992 and learned that they “[were] denied [PUA benefits] and had to appeal.” EAB Exhibit 1 at 7.

CONCLUSIONS AND REASONS: Order No. 22-UI-187992 is set aside and this matter remanded for a hearing on whether claimant’s late request for hearing on the October 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.

On October 4, 2021, the Department mailed the October 4, 2021 administrative decision to claimant at claimant’s address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on that decision was October 25, 2021. Claimant did not file a request for hearing on the October 4, 2021 administrative decision until December 14, 2021. Accordingly, claimant’s request for hearing was late.

On their appellant questionnaire response, claimant stated that they learned that they “[were] denied [PUA benefits] and had to appeal” after receiving Order No. 22-UI-187992. EAB Exhibit 1 at 7. This suggests claimant may not have received the October 4, 2021 administrative decision since the statement refers to claimant learning about the denial only after receiving the hearing order, which was mailed to claimant months after the Department mailed the administrative decision. If claimant did not receive the administrative decision, claimant’s late request for hearing may have been the result of factors beyond their reasonable control. However, further inquiry is needed to determine whether claimant had good cause to file the late request for hearing, and if so, whether they filed the late request for hearing within a reasonable time. On remand, the ALJ should ask questions to determine whether claimant ever received the administrative decision prior to the issuance of Order No. 22-UI-187992, and if not, to determine whether claimant’s failure to receive the administrative decision was due to a factor beyond claimant’s reasonable control or an excusable mistake, and whether claimant’s December 14, 2021 request for hearing was filed within a seven-day “reasonable time” of when either such factor ceased to exist. The ALJ should also ask questions to determine whether any of claimant’s numerous contacts with the Department occurred after the administrative decision was mailed on October 4, 2021. This inquiry should include what Department records indicate about any such contacts, such as whether the

Department's records indicate that the Department informed claimant of the existence of the administrative decision or the opportunity to appeal it during any such contacts.

Order No. 22-UI-187992 therefore is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing should be allowed, and if so, the merits of the October 4, 2021 administrative decision.

DECISION: Order No. 22-UI-187992 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 2, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-187992 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 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 الإستئناف 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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