

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0668

Reversed & Remanded

PROCEDURAL HISTORY: On November 16, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was overpaid \$270 in Pandemic Unemployment Assistance (PUA) benefits and \$1,500 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 110959). On December 7, 2020, decision # 110959 became final without claimant having filed a request for hearing. On March 16, 2021, a late request for hearing was filed. ALJ Kangas considered the request, and on June 6, 2022 issued Order No. 22-UI-195356 dismissing the request as invalid, and leaving decision # 110959 undisturbed. On June 13, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

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 the hearing request form filed to appeal decision # 110959, 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) On November 16, 2020, the Department mailed decision # 110959 to claimant's address of record on file with the Department. The decision stated, in relevant part, "Any appeal from this decision must be filed on or before Dec 07, 2020 to be timely." EAB Exhibit 1 at 5.

(2) At some point either before or after the Department issued decision # 110959, claimant received paperwork stating that the Department had forgiven the overpayment assessed in decision # 110959. EAB Exhibit 1 at 1.

(3) On March 16, 2021, a request for hearing was filed on decision # 110959. Claimant was a high school senior at the time. EAB Exhibit 1 at 1. In the issue description of claimant's hearing request form, the filer identified themselves as claimant's mother. EAB Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Order No. 22-UI-195356 is set aside and this matter remanded for a hearing on whether the request for hearing was valid and should be allowed despite its untimeliness, and if so, the merits of the decision # 110959.

Validity of the Hearing Request. For a request for hearing to be valid, “the party” must “specifically request[] a hearing or otherwise express[] a present intent to appeal[.]” OAR 471-040-0005(1) (effective July 18, 2018). Under OAR 471-040-0035(3)(e) (effective August 8, 2004), an administrative law judge may order that a request for hearing be dismissed on their own initiative if “[t]he request for hearing is made by a person not entitled to a hearing on the merits[.]”

The order under review found that claimant “did not specifically request a hearing or otherwise express a present intent to appeal in the written communication submitted.” Order No. 22-UI-195356 at 1. The order reasoned this was so because “claimant’s mother filed [the] request” and “claimant’s mother is not a party to his claim.” Order No. 22-UI-195356 at 1. Additionally, the order stated that claimant did not respond to the Office of Administrative Hearings (OAH)’s request that claimant provide it “with a letter of representation giving his mother permission to represent him . . . , nor did he submit a hearing request [himself].” Order No. 22-UI-195356 at 1. However, the record as developed does not support dismissing claimant’s request for hearing on the basis that it was invalid. OAR 471-040-0005(1) or 471-040-0035(3)(e).

Decision # 110959 is a PUA overpayment decision. Minors may be eligible to receive PUA benefits so long as federal or state laws relating to the employment of minors do not bar the minor individual from qualifying for PUA. *See* U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 2 (July 21, 2020) (UIPL 16-20, Change 2), at I-3–I-4. In the issue description in claimant’s hearing request form, the drafter, who identifies himself as claimant’s mother, states that claimant is a senior in high school. EAB Exhibit 1 at 1. Given that minors may be eligible to receive PUA benefits, if claimant was an unemancipated minor, and his request for hearing was filed by his mother with parental rights, those circumstances are sufficient to conclude that the request for hearing was constructively filed by claimant.

On remand, the ALJ should ask questions to develop the record as to whether claimant submitted the request for hearing personally. If not, the ALJ should inquire whether his mother with parental rights filed the request on his behalf and, if so, whether he was an unemancipated minor at the time. The ALJ should also ask questions to develop the record relating to the finding in the order under review that claimant did not respond to the Office of Administrative Hearings’ request that claimant provide it with a letter of representation giving his mother permission to represent him, given that there’s no evidence of such a request in the hearing record.

Late Request for Hearing. 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 November 16, 2020, the Department mailed decision # 110959 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 December 7, 2020. The request for hearing on decision # 110959 was not filed until March 16, 2021. Accordingly, the request for hearing was late.

EAB Exhibit 1 contains information indicating that the Department gave claimant paperwork stating that the overpayment represented by decision # 110959 was forgiven. If claimant was advised that the overpayment was forgiven, that might constitute a factor beyond his reasonable control or an excusable mistake that would provide good cause to extend the deadline to file the hearing request. On remand, the ALJ should ask questions to determine if and when claimant was granted an overpayment waiver, and if or when the Department sent claimant any bills or other correspondence relating to the overpayment. To the extent the record on remand shows that the Department's grant of a waiver was an excusable mistake or factor beyond claimant's control that prevented timely filing, the ALJ should inquire when the circumstances that prevented a timely filing (if any) ceased to exist, and whether the March 16, 2021 request for hearing was filed within a seven-day "reasonable time" thereafter.

Order No. 22-UI-195356 therefore is reversed, and this matter remanded for a hearing on whether the late request for hearing was valid and should be allowed despite its untimeliness, and if so, the merits of the decision # 110959.

DECISION: Order No. 22-UI-195356 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 17, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-195356 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

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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