

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0676

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On December 29, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to receive PUA benefits effective December 6, 2020. On January 18, 2022, the PUA determination became final without claimant having filed a request for hearing. On January 26, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on April 19, 2022 issued Order No. 22-UI-191696, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 3, 2022. On May 5, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-191696 with the Employment Appeals Board (EAB). On June 16, 2022, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding this matter because the response was late. This matter comes before EAB based upon claimant's May 5, 2022 application for review of Order No. 22-UI-191696.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's response to the appellant questionnaire, 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(s) will remain in the record.

CONCLUSIONS AND REASONS: Order No. 22-UI-191696 is set aside and this matter remanded for a hearing on whether claimant's late request for hearing on the December 29, 2021 PUA determination 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. Under OAR 471-040-0010(1)(a)(A), good cause includes, “Failure to receive a document because the Employment Department or Office of Administrative hearings mailed it to an incorrect address despite having the correct address[.]” Under OAR 471-040-0010(1)(b)(A), however, good cause does not include, “Failure to receive a document due to not notifying [the Department] . . . of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal[.]”

On December 29, 2021, the Department mailed notice of the December 29, 2021 PUA determination to claimant’s address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on the PUA determination was January 18, 2022. Claimant did not file a request for hearing until January 26, 2022. As such, claimant’s request for hearing was late.

In their appellant questionnaire response, claimant indicated that they believed they had filed a timely request for hearing on the December 29, 2021 PUA determination, and that they had also filed three separate requests for hearing between January 25, 2022 through January, 28, 2022. EAB Exhibit 1 at 1. Claimant also indicated in their response that, “[they] were in the process of moving and [they] were not getting [their] mail in a timely manner.” EAB Exhibit 1 at 2. Claimant’s response raises the possibility that claimant may not have received the December 29, 2021 PUA determination, but instead confused their receipt of the PUA determination with their receipt of other administrative decisions issued by the Department for which claimant timely sought a hearing. If claimant did not receive the PUA determination due to issues with the timely receipt of their mail, claimant’s failure to file a timely request for hearing by the January 18, 2022 deadline may have been due to a factor beyond their reasonable control. However, if claimant did not receive the PUA determination due to a failure to update their address with the Department while they were claiming benefits, or had reason to know about a pending appeal, good cause may not exist to allow their late request for hearing. OAR 471-040-0010(1)(b)(A).

On remand, further inquiry is therefore needed to address the specific circumstances surrounding claimant’s referenced move and the difficulties claimant experienced in timely receiving their mail during that period, including whether any of claimant’s difficulties resulted from a failure to update their address with the Department while they were claiming benefits or had reason to know of a pending appeal. Notwithstanding any such difficulties, if it is determined that claimant learned of the PUA determination prior to the January 18, 2022 hearing request deadline, inquiry should address the reason(s) why claimant did not timely request a hearing by that deadline. Conversely, if it is determined that claimant did not learn about the PUA determination until after the January 18, 2022 hearing request deadline, further inquiry should address the precise date that claimant learned of the decision. Once that date is determined, further inquiry should address whether claimant’s mail difficulties caused claimant’s delayed receipt of the decision, whether these difficulties were a factor beyond claimant’s reasonable control, and, if so, whether claimant submitted their January 26, 2022 hearing request within a reasonable time after those factors ceased to exist.

Because further development of the record is necessary to determine whether claimant’s late request for hearing on the December 29, 2021 PUA determination should be allowed and, if so, the merits of that decision, Order No. 22-UI-191696 is reversed, and this matter is remanded.

DECISION: Order No. 22-UI-191696 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: July 1, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-191696 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 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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