

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0848

Reversed & Remanded

PROCEDURAL HISTORY: On November 12, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that that claimant is not eligible for Pandemic Emergency Unemployment Compensation (PEUC) benefits for the weeks of May 16 through July 3, 2021 (weeks 20-21 through 26-21), July 11 through July 24, 2021 (weeks 28-21 through 29-21), August 1 through August 28, 2021 (weeks 31-21 through 34-21), and September 5 through September 11, 2021 (week 36-21) (decision # 142154). On December 2, 2021, decision # 142154 became final without claimant having filed a request for hearing.

On February 1, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on May 9, 2022 issued Order No. 22-UI-193209, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 23, 2022. On May 27, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-193209 with the Employment Appeals Board (EAB). On August 2, 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 questionnaire response was late. This matter comes before EAB based upon claimant's May 27, 2022 application for review of Order No. 22-UI-193209.

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, 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 12, 2021, the Department mailed decision # 142154 to claimant's address of record on file with the department. The decision concluded that claimant was not eligible for an Oregon PEUC claim because claimant may be monetarily eligible for other unemployment insurance benefits in the state of Washington. Exhibit 1 at 1. The decision also stated, in

relevant part, “Any appeal from this decision must be filed on or before December 02, 2021 to be timely.” Exhibit 1 at 2. Claimant received decision # 142154 after it was mailed and was aware of the December 2, 2021 deadline to request a hearing.

(2) Claimant did not file a request for hearing by the December 2, 2021 deadline because they “w[ere] waiting to hear back from Washington State to see if they would pay [their] claim.” EAB Exhibit 1 at 3. On or February 1, 2022, claimant learned that they were not eligible for unemployment insurance benefits in Washington. On February 1, 2022, claimant filed a late request for hearing on decision # 142154.

CONCLUSIONS AND REASONS: Order No. 22-UI-193209 is set aside and this matter remanded for a hearing on whether claimant’s late request for hearing on decision # 142154 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 November 12, 2021, the Department mailed decision # 142154 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 2, 2021. Claimant did not file a request for hearing on decision # 142154 until February 1, 2022. Accordingly, claimant’s request for hearing was late.

In their appellant questionnaire response, claimant indicated that they did not appeal decision # 142154 by the December 2, 2021 deadline because they were “instructed by the state of Oregon to appeal to Washington State first, and then if they did not pay – to appeal to Oregon State.” EAB Exhibit 1 at 3. Claimant further stated that they were “waiting to hear back from Washington State to see if they would pay [their] claim” at the time the December 2, 2021 deadline to appeal passed without claimant having filed a request for hearing. EAB Exhibit 1 at 3. Claimant stated that they filed their request for hearing on February 1, 2022, because it was on or about that date that they learned that they were not eligible for unemployment insurance benefits in Washington. EAB Exhibit 1 at 3.

If the Department instructed claimant not to request a hearing on decision # 142154 unless and until they learned they did not have a valid claim for unemployment insurance benefits in Washington, claimant’s late request for hearing may have been the result of an excusable mistake or factors beyond their reasonable control. However, further inquiry is needed to determine whether claimant had good cause to file their late request for hearing and, if so, whether they did so within a reasonable time. On remand, the ALJ should ask questions to confirm whether the Department gave claimant instructions not to appeal unless and until they learned they were not eligible for a claim for benefits in Washington. If the evidence shows that this was the case, the ALJ should develop the record to determine whether claimant’s request for hearing was filed within a seven-day “reasonable time” after any excusable mistake or factor beyond their control owing to the Department’s instructions ceased to exist. To that end, the ALJ should ask questions to develop when precisely claimant learned that they did not have a

valid claim in Washington and, after gaining that knowledge, how much time elapsed before claimant made their request for hearing on February 1, 2022.

Order No. 22-UI-193209 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 decision # 142154.

DECISION: Order No. 22-UI-193209 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: August 11, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-193209 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 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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