

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0859

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On August 10, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible to receive PUA benefits effective December 27, 2020. On August 20, 2021, the Department served a Notice of Determination for Pandemic Unemployment Assistance concluding that claimant was not eligible to receive PUA benefits effective December 6, 2020. On August 30, 2021, the August 10, 2021 PUA determination became final without claimant having filed a request for hearing. On September 9, 2021, the August 20, 2021 PUA determination became final without claimant having filed a request for hearing.

On February 18, 2022, claimant filed late requests for hearing on the August 10, 2021 and August 20, 2021 PUA determinations. ALJ Kangas considered claimant's requests, and on May 17, 2022 issued Orders No. 22-UI-193980 and 22-UI-193978, dismissing claimant's requests for hearing on the August 10, 2021 and August 20, 2021 PUA determinations as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by May 31, 2022. On June 6, 2022 claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 22-UI-193980 and 22-UI-193978 with the Employment Appeals Board (EAB). On August 2, 2022, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue additional orders regarding these matters because the questionnaire response was late. These matters come before EAB based upon claimant's June 6, 2022 applications for review of Orders No. 22-UI-193980 and 22-UI-193978.

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(s) will remain in the record.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-193980 and 22-UI-193978. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0859 and 2022-EAB-0858).

CONCLUSIONS AND REASONS: Orders No. 22-UI-193980 and 22-UI-193978 are reversed and these matters remanded for a hearing on whether claimant's late requests for hearing on the August 10, 2021 and August 20, 2021 PUA determinations should be allowed and, if so, the merits of those decisions.

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.

The request for hearing on the August 10, 2021 and August 20, 2021 PUA determinations were due by August 30, 2021 and September 9, 2021. Because claimant did not file their requests for hearing until February 18, 2022, the requests were late.

On their response to the appellant questionnaire, claimant indicated when they received at least one of the PUA determinations at issue. EAB Exhibit 1 at 2. However, claimant's response is not legible due to the quality of the facsimile transmission, and it is not clear from their response which of the two PUA determinations they were referring to. If claimant did not receive the PUA determinations prior to their respective timely filing deadlines, claimant may have failed to file timely requests for hearing due to factors beyond their reasonable control. Further, claimant explained in their questionnaire response that their father helped them complete the questionnaire because they "have a difficult time with reading comprehension and filling out paperwork." EAB Exhibit 1 at 3.

On remand, the ALJ should inquire as to when claimant received each of the PUA determinations and, if they did not receive the decisions prior to the timely filing deadlines, what caused the delay or otherwise caused claimant to receive the decisions when they did. Additionally, the ALJ should inquire as to whether claimant has any intellectual or cognitive impairments that prevented them from being able to file the requests for hearing prior to the timely filing deadlines, how any such condition(s) prevented them from filing timely, and when they were able to obtain help from their father. The ALJ should also ask questions to determine whether claimant filed the requests for hearing within a seven-day "reasonable time" after any factor or factors preventing a timely filing ceased to exist.

Orders No. 22-UI-193980 and 22-UI-193978 are therefore reversed, and these matters remanded for a hearing on whether claimant's late requests for hearing should be allowed and, if so, the merits of the August 10, 2021 and August 20, 2021 PUA determinations.

DECISION: Orders No. 22-UI-193980 and 22-UI-193978 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: August 18, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-193980 and 22-UI-193978 or return these matters to EAB. Only timely application for review of the subsequent orders will cause these matters 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

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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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