

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0917-R

Request for Reconsideration Allowed

EAB Decision 2022-EAB-0917 Adhered to on Reconsideration and Remains Undisturbed

Eligible for Pandemic Unemployment Assistance Weeks 53-20 through 16-21 and 18-21 through 20-21

PROCEDURAL HISTORY AND FINDINGS OF FACT: On May 4, 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 starting December 27, 2020 because he failed to provide acceptable proof of employment or self-employment within the required period. Claimant filed a timely request for hearing. On February 10, 2022, ALJ Frank conducted a hearing, and on February 17, 2022 issued Order No. 22-UI-186782, affirming the May 4, 2021 administrative decision. On February 21, 2022, claimant filed an application for review with the Employment Appeals Board (EAB). On April 25, 2022, EAB issued EAB Decision 2022-EAB-0259, reversing Order No. 22-UI-186782 and remanding the matter for further development of the record. On August 18, 2022, ALJ Frank conducted a hearing, and on August 25, 2022 issued Order No. 22-UI-201390, again affirming the May 4, 2021 administrative decision. On August 29, 2022, claimant filed an application for review with EAB.

On November 23, 2022, EAB issued EAB Decision 2022-EAB-0917, reversing Order No. 22-UI-201390 by concluding that claimant was eligible to receive PUA benefits for the weeks including December 27, 2020 through April 24, 2021 (weeks 53-20 through 16-21) and May 2, 2021 through May 22, 2021 (weeks 18-21 through 20-21). On December 2, 2022, claimant filed a request for reconsideration of EAB Decision 2022-EAB-0917. On December 7, 2022, claimant filed a petition for judicial review of EAB Decision 2022-EAB-0917 with the Oregon Court of Appeals. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision.

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is allowed. EAB Decision 2022-EAB-0917 is adhered to on reconsideration.

ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including "the making of a new decision to the extent necessary and

appropriate for the correction of previous error of fact or law.” “Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice.” OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

Claimant filed his request for reconsideration on December 2, 2022, which was within 20 days of the November 23, 2022 date EAB Decision 2022-EAB-0917 was mailed. Claimant therefore filed a request for reconsideration consistent with the requirements set forth in OAR 471-041-0145, and the request for reconsideration is allowed.

Claimant was the prevailing party in EAB Decision 2022-EAB-0917, as the decision reversed the underlying hearing order and concluded that claimant was eligible to receive PUA benefits for the weeks at issue. Nevertheless, claimant expressed disagreement with two aspects of EAB Decision 2022-EAB-0917 in his request for reconsideration. First, claimant disagreed with a statement made in EAB Decision 2022-EAB-0917 relating to the written argument claimant submitted for that appeal on August 31, 2022. Specifically, EAB Decision 2022-EAB-0917, under the “Written Argument” heading, stated that claimant’s August 31, 2022 written argument contained information not part of the hearing record and that EAB therefore considered claimant’s written argument to the extent it was based on the record. EAB Decision 2022-EAB-0917 at 1. Second, claimant noted that two Board members decided EAB Decision 2022-EAB-0917 while a third did not participate. That a member of the Board did not participate in deciding EAB Decision 2022-EAB-091 troubled claimant, and he likened it to members of a legislature refusing to vote on an important issue.

EAB Decision 2022-EAB-0917 stated that claimant’s written argument contained information not part of the hearing record because attached to the written argument were direct deposit forms that did not appear in the record in the case.¹ EAB Decision 2022-EAB-0917 was decided by two members rather than three because, under ORS 657.685(3), a majority of EAB constitutes a quorum and per OAR 471-041-0095 (effective October 29, 2006), “Cases are considered in panels of two or three EAB members.”

Claimant’s request for reconsideration does not show that EAB Decision 2022-EAB-0917 contained an error of material fact or law, or was inconsistent with any Department rule, officially stated Department position, or prior Department practice. EAB Decision 2022-EAB-0917 therefore is adhered to on reconsideration. EAB Decision 2022-EAB-0917, which reversed Order No. 22-UI-201390 and concluded that claimant was eligible to receive PUA benefits for the weeks at issue, remains undisturbed.

DECISION: The request for reconsideration filed on December 2, 2022 is allowed. EAB Decision 2022-EAB-0917 is adhered to on reconsideration.

¹ In raising his disagreement regarding whether his August 31, 2022 written argument contained information not part of the hearing record, claimant attached the written argument to his reconsideration request. The written argument claimant attached is not exactly the same as that which he originally submitted on August 31, 2022. The attached written argument lacks two direct deposit forms that were attached to the original August 31, 2022 written argument submission and which were the portions of the written argument that were not part of the hearing record.

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

DATE of Service: January 18, 2023

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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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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