

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0964

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On February 1, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA benefits effective April 26, 2020. On February 22, 2021, the February 1, 2021 administrative decision became final without claimant having filed a request for hearing. On March 7, 2022, claimant filed a late request for hearing on the February 1, 2021 administrative decision.¹ ALJ Kangas considered claimant's request, and on June 7, 2022 issued Order No. 22-UI-195491, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by June 21, 2022. On June 21, 2022, claimant filed a timely response to the appellant questionnaire. On August 4, 2022, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 22-UI-195491 was vacated and that a hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of the February 1, 2021 administrative decision. On August 24, 2022, ALJ Frank conducted a hearing, and on September 1, 2022 issued Order No. 22-UI-201925, concluding that claimant did not have good cause to file the late request for hearing and leaving the February 1, 2021 administrative decision undisturbed. On September 15, 2022, claimant filed an application for review of Order No. 22-UI-201925 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On February 1, 2021, the Department mailed the February 1, 2021 administrative decision to an address in Portland, Oregon that claimant had never lived at and had never

¹ As explained herein, the record suggests that claimant did not personally file the request for hearing. Nevertheless, a request for hearing on the February 1, 2021 administrative decision was filed in claimant's name on that date.

given to the Department as his address of record. Claimant did not receive a copy of the February 1, 2021 administrative decision. On February 22, 2021, the February 1, 2021 administrative decision became final without claimant having filed a request for hearing.

(2) On January 11, 2022, the Department issued another administrative decision, which also concluded that claimant was not eligible to receive PUA benefits for the same reason as was found by the February 1, 2021 administrative decision. Claimant did not receive a copy of the January 11, 2022 administrative decision. On January 31, 2022, the January 11, 2022 administrative decision became final without claimant having filed a request for hearing.

(3) On several occasions in February 2022, a person purporting to be claimant contacted the Department regarding the status of claimant's PUA claim.

(4) On March 7, 2022, a request for hearing on the February 1, 2021 administrative decision was filed in claimant's name. Claimant did not file the request for hearing, and the person who did file it misspelled claimant's first name.

(5) In June 2022, after having received a copy of Order No. 22-UI-195491, claimant became aware that his claim for PUA benefits had been denied.

CONCLUSIONS AND REASONS: Claimant had good cause to file the late request for hearing and is entitled to a hearing on the merits of the February 1, 2021 administrative 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.

The request for hearing on the February 1, 2021 administrative decision was due by February 22, 2021. Because a request for hearing on that decision was not filed until March 7, 2022, the request was late. The order under review concluded that while claimant's failure to receive the February 1, 2021 administrative decision was a factor beyond his reasonable control, he did not have good cause to file the late request for hearing because he did not do so within a reasonable time after those factors ceased. Order No. 22-UI-201925 at 3. The record does not support this conclusion.

The conclusion reached by the order under review is apparently premised upon the testimony of the Department's witness. At hearing, she indicated that claimant had contacted the Department on several occasions in February 2022, and that Department representatives had advised claimant that he had been denied PUA benefits and could appeal. Audio Record at 16:02 to 17:58. While claimant's testimony indicated that he was unsure whether those calls had taken place, he did not testify that he was advised so as to be aware of the administrative decision or his appeal rights. Audio Record at 32:50 to 33:30. Further, claimant testified that he became aware of the fact that he had been denied PUA benefits when he received Order No. 22-UI-195491 (which was issued on June 7, 2022).

As claimant's testimony was a first-hand account, where the Department witness offered hearsay based on notes from other Department employees, claimant's testimony is afforded more weight here. This is particularly true in light of claimant's allegation of identity theft, as this suggests that an impostor might have called the Department pretending to be claimant and receiving the alleged advisories about the denial of benefits that were intended for claimant. Therefore, the record shows that claimant was not aware of the February 1, 2021 administrative decision or his accompanying appeal rights until sometime in June 2022 when he received a copy of Order No. 22-UI-195491. Because claimant was not aware of the February 1, 2021 administrative decision until well after the timely filing deadline, he failed to file a timely request for hearing due to factors beyond his reasonable control. Furthermore, as the request for hearing was filed *before* claimant actually learned about the February 1, 2021 administrative decision, it was filed less than seven days after the factors beyond claimant's reasonable control ceased. Therefore, claimant established good cause to extend the deadline to file a request for hearing on the February 1, 2021 administrative decision to March 7, 2022.

For the above reasons, claimant's late request for hearing on the February 1, 2021 administrative decision is allowed, and claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 22-UI-201925 is reversed and this matter remanded for a hearing on the merits of the February 1, 2021 administrative decision.

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

DATE of Service: November 30, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-201925 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 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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