

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0971

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On March 4, 2022, 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 February 9, 2020. On March 24, 2022, the March 4, 2022 administrative decision became final without claimant having filed a request for hearing. On April 6, 2022, claimant filed a late request for hearing on the March 4, 2022 administrative decision. On August 22, 2022, ALJ Frank conducted a hearing, and on August 30, 2022 issued Order No. 22-UI-201685, denying claimant's late request for hearing and leaving the March 4, 2022 administrative decision undisturbed. On September 19, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

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

EVIDENTIARY MATTER: On August 22, 2022, the Office of Administrative Hearings (OAH) received from claimant a two-page document that claimant had submitted for consideration at hearing. However, the document was not marked as an exhibit, nor does it appear to have been entered into the record. As a clerical matter, EAB has marked the document as Exhibit 4, and a copy has been provided with this decision. At the remand hearing, the ALJ will determine if Exhibit 4 should be admitted into evidence.

FINDINGS OF FACT: (1) On December 24, 2020, claimant filed an initial claim for PUA benefits. On September 4, 2021, claimant contacted the Department to inquire about the status of his claim, as he had not yet been paid for several weeks of benefits that he had claimed. On September 8, 2021, a representative from the Department responded to claimant's inquiry and indicated that they would resolve an issue that had prevented payment of claimant's benefits. The Department subsequently released payment for the weeks of benefits about which claimant had inquired.

(2) On March 1, 2022, one of the Department's investigators attempted to contact claimant regarding his eligibility for PUA benefits by sending claimant an email to his email address of record. Claimant did

not see the March 1, 2022 email at the time because it had gotten mixed in with his junk email. At the time, claimant was not expecting correspondence from the Department.

(3) On March 4, 2022, after claimant failed to respond to the investigator's email, the Department mailed the March 4, 2022 administrative decision to claimant's address on file with the Department. The March 4, 2022 administrative decision stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by March 24, 2022." Exhibit 1 at 2.

(4) At the time that the March 4, 2022 administrative decision was issued, claimant was experiencing homelessness, and did not have a permanent or regular place to stay. Claimant was using the address of a client to receive mail. The Department mailed the March 4, 2022 administrative decision to that address. Due to the distance between where he sometimes stayed and the location of his address of record, as well as a medical issue that limited his mobility, claimant was generally only able to check his mail every one to two months. Claimant did not check his mail during March 2022, and did not contact the Department during that month.

(5) On March 24, 2022, the March 4, 2022 administrative decision became final without claimant having filed a request for hearing. On April 6, 2022, claimant filed a late request for hearing on the March 4, 2022 administrative decision.¹

CONCLUSIONS AND REASONS: Order No. 22-UI-201685 is reversed and this matter remanded for a hearing on the merits of the March 4, 2022 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 March 4, 2022 administrative decision was due by March 24, 2022. Because claimant did not file his request for hearing until April 6, 2022, the request was late. The order under review concluded that "it was likely within claimant's reasonable control to check for his mail more frequently, especially while awaiting determinations from the Employment Department," and that he therefore did not have good cause to file the late request for hearing. Order No. 22-UI-201685 at 3. The record does not support this conclusion.

The record shows that claimant failed to file his request for hearing by the timely filing deadline because he was experiencing homelessness and was unable to check his mail on a frequent basis due to distance and a medical condition. Additionally, while claimant might have been able to request that his client

¹ The record also shows that on March 16, 2022, the Department issued an administrative decision, based in part on the March 4, 2022 administrative decision, which assessed an overpayment of benefits and penalties that claimant was required to repay to the Department. Exhibit 3 at 3-5. It is not clear from the record whether claimant intended to appeal this administrative decision as well. EAB has forwarded a copy of claimant's April 6, 2022 request for hearing and the March 16, 2022 administrative decision to the Department to determine whether claimant's request for hearing should have been construed to include the March 16, 2022 administrative decision.

open his mail and read it to him, claimant had no reason to expect mail from the Department in March 2022, such that he would have taken such a step. The matter of his delayed payment of benefits had been resolved several months prior, and claimant therefore had no reason to expect correspondence from the Department on that basis. Further, while the March 1, 2022 email from the Department's investigator might have alerted him to the possibility of forthcoming correspondence, claimant did not see the email because it was mixed in with his junk email. Overall, given claimant's limited access to his mail, and his lack of a reason to take extra measures to ensure that he was timely aware of any mail from the Department, claimant's failure to receive the March 4, 2022 administrative decision was the result of factors beyond his reasonable control.

Further, the record shows that claimant filed his request for hearing within a reasonable time after those factors ceased. Claimant did not check his mail at all during the month of March 2022, meaning that the first day on which he could have become aware of the March 4, 2022 administrative decision was April 1, 2022. Claimant filed the request for hearing on April 6, 2022. Claimant therefore filed the request for hearing within a reasonable time after the factors which prevented him from filing it timely ceased to exist. As a result, claimant had good cause to file the late request for hearing on the March 4, 2022 administrative decision, and is entitled to a hearing on the merits of that decision.

At the remand hearing, the ALJ will determine if Exhibit 4 should be admitted into evidence.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary to determine whether claimant was eligible for PUA benefits, Order No. 22-UI-201685 is reversed, and this matter is remanded.

DECISION: Order No. 22-UI-201685 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: December 9, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-201685 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.