

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0981

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On February 15, 2022, 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 December 27, 2020. On March 7, 2022, the February 15, 2022 PUA determination became final without claimant having filed a request for hearing. On March 15, 2022, claimant filed a late request for hearing. ALJ Kangas considered the request, and on June 15, 2022, issued Order No. 22-UI-196184, dismissing the request as late, subject to claimant's right to renew the request by responding to the appellant questionnaire by June 29, 2022. On June 20, 2022 claimant responded to the appellant questionnaire. On August 11, 2022, the Office of Administrative Hearings (OAH) mailed a letter cancelling and vacating Order No. 22-UI-196184, and stating that a hearing would be held on whether claimant's late request for hearing should be allowed and, if so, the merits of the February 15, 2022 PUA determination. On August 31, 2022, ALJ Frank conducted the hearing, and on September 8, 2022 issued Order No. 22-UI-202259, dismissing claimant's late request for hearing as without good cause, leaving the February 15, 2022 PUA determination undisturbed. On September 23, 2022, claimant filed an application for review of Order No. 22-UI-202259 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's September 23 and 27, 2022 written arguments 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 arguments to the extent they were based on the record.

In claimant's September 27, 2022 written argument, he also asserted that the hearing proceedings were unfair. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

FINDINGS OF FACT: (1) The Department mailed the February 15, 2022 PUA determination to claimant at the wrong address. Claimant therefore did not receive the February 15, 2022 PUA determination in the mail.

(2) On March 3, 2022, claimant called the Department to inquire about the status of his PUA benefits. Claimant was unable to pass the Department's ID verification, because he provided his correct address, which did not match the wrong address in the Department's records. The Department could not provide him with any information about his case or the February 15, 2022 PUA determination because he did not pass the ID verification. Claimant stated that he wanted a hearing during this call. Claimant was told that if he wanted a hearing he could request one online.

(3) On March 3, 2022, claimant went into the Department's Gresham office, made a second phone call to the Department, and received a telephone call from the Department's tax division. Claimant was not informed of the February 15, 2022 PUA determination during any of these contacts.

(4) On March 14, 2022, claimant contacted the Department regarding his PUA claim and was informed of the February 15, 2022 PUA determination.

(5) On March 15, 2022, claimant filed a late request for hearing on the February 15, 2022 PUA determination.

CONCLUSIONS AND REASONS: Order No. 22-UI-202259 is reversed and this matter remanded for a hearing on the merits of the February 15, 2022 PUA determination.

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.

A request for hearing on the February 15, 2022 PUA determination was due by March 7, 2022. Claimant did not file his request for hearing until March 15, 2022, and therefore the request was late. At hearing and in the appellant questionnaire, claimant explained that he had not received the February 15, 2022 PUA determination because the Department mailed it to the wrong address. The Department did not dispute mailing the PUA determination to the wrong address or assert that claimant received the February 15, 2022 PUA determination in the mail. Claimant's not receiving the PUA determination in the mail was a factor beyond his reasonable control.

The order under review nevertheless concluded that claimant did not show good cause to extend the March 7, 2022 filing deadline because claimant was informed of the PUA determination prior to the deadline and given instructions on how to appeal. Order No. 22-UI-202259 at 3. However, the record does not support this conclusion.

Claimant and the Department's representative both testified that claimant was not given the details of the February 15, 2022 PUA determination during his initial call with the Department on March 3, 2022.

Audio Recording at 13:10 and 17:45. Claimant also provided uncontested testimony that he was not informed of the contents of the February 15, 2022 decision during any of the subsequent March 3, 2022 contacts, and that he did not learn of the February 15, 2022 PUA determination until March 14, 2022. Audio Recording at 18:18 to 19:15. The department's representative provided no further information regarding when claimant was informed of the February 15, 2022 PUA determination. The record therefore shows that claimant did not become aware of the February 15, 2022 PUA determination until March 14, 2022. While claimant was given appeal instructions before this date, he did not know of a decision that he needed to appeal until March 14, 2022. The circumstances that prevented him from filing a timely request for hearing therefore did not cease to exist until March 14, 2022. Claimant filed his request on March 15, 2022, which was within the reasonable time period after these circumstances ceased to exist.

For the above reasons, claimant had good cause for failing to file a timely request for hearing, and filed his late request for hearing within a reasonable time. Claimant's late request for hearing on the February 15, 2022 PUA determination therefore is allowed, and claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 22-UI-202259 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: November 18, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-202259 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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