

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0994

Reversed
Late Requests for Hearing Allowed
Merits Hearings Required

PROCEDURAL HISTORY: On January 27, 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 April 19, 2020. On February 16, 2022, the January 27, 2022 administrative decision became final without claimant having filed a request for hearing. On February 18, 2022, the Department served notice of an administrative decision, based in part on the January 27, 2022 administrative decision, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$14,350 overpayment of PUA benefits, an \$18,900 overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits, a \$1,800 overpayment of Lost Wages Assistance (LWA) benefits, and a \$9,975 monetary penalty. On March 10, 2022, the February 18, 2022 administrative decision became final without claimant having filed a request for hearing. On March 17, 2022, claimant filed late requests for hearing on the January 27, 2022 and February 18, 2022 administrative decisions.

ALJ Kangas considered claimant's requests, and on June 22, 2022 issued Orders No. 22-UI-196583 and 22-UI-196584, dismissing claimant's requests for hearing on the January 27, 2022 and February 18, 2022 administrative decisions, respectively, as late without a showing of good cause, subject to claimant's right to renew the requests by responding to appellant questionnaires by July 6, 2022. On July 4, 2022, claimant filed a timely response to the appellant questionnaires. On August 11, 2022, the Office of Administrative Hearings (OAH) mailed letters stating that Orders No. 22-UI-196583 and 22-UI-196584 were vacated and that a new hearing would be scheduled to determine whether claimant had good cause to file the late requests for hearing and, if so, the merits of the January 27, 2022 and February 18, 2022 administrative decisions.

On September 8, 2022, ALJ Frank conducted a hearing on the January 27, 2022 and February 18, 2022 administrative decisions. On September 15, 2022, ALJ Frank issued Order No. 22-UI-202757, denying claimant's late request for hearing on the February 18, 2022 administrative decision and leaving that decision undisturbed. On September 16, 2022, ALJ Frank issued Order No. 22-UI-202794, denying claimant's late request for hearing on the January 27, 2022 administrative decision and leaving that decision undisturbed. On September 28, 2022, claimant filed applications for review of Orders No. 22-UI-202794 and 22-UI-202757 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-202794 and 22-UI-202757. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0993 and 2022-EAB-0994).

FINDINGS OF FACT: (1) At some point prior to January 2022, a wildfire destroyed claimant's home. Claimant moved into temporary housing provided by the Federal Emergency Management Agency (FEMA). The FEMA housing did not have a mailbox. As a result, claimant, who lived in the FEMA housing in White City, Oregon, had to receive her mail from a mailbox in a UPS Store located in Medford, Oregon. The UPS Store in Medford was several miles away from White City, and not within walking distance of the FEMA housing.

(2) On January 27, 2022, the Department mailed the January 27, 2022 administrative decision to claimant's address on file with the Department. The January 27, 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 February 16, 2022." Order No. 22-UI-202794 Exhibit 1 at 2.

(3) On February 18, 2022, the Department mailed the February 18, 2022 administrative decision to claimant's address on file with the Department. The February 18, 2022 administrative decision stated, "Any appeal from this decision must be filed on or before March 10, 2022 . . . to be timely." Order No. 22-UI-202757 Exhibit 1 at 1.

(4) During the months of January, February, and March 2022, claimant's vehicle was broken down. Claimant could not afford to have her vehicle repaired during that time. Claimant was unable to travel to Medford to check her mail unless she got a ride.

(5) On March 17, 2022, claimant got a ride to the UPS store in Medford and was able to check her mail. When claimant checked her mail, she realized the Department had sent her the January 27, 2022 and the February 18, 2022 administrative decisions. On the same day, claimant requested hearings on the January 27, 2022 and the February 18, 2022 administrative decisions.

CONCLUSIONS AND REASONS: Orders No. 22-UI-202794 and 22-UI-202757 are reversed, claimant's late requests for hearing are allowed, and hearings on the merits of the January 27, 2022 and the February 18, 2022 administrative decisions are required.

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.

On January 27, 2022, the Department mailed the January 27, 2022 administrative decision to claimant at claimant’s address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on that decision was February 16, 2022. On February 18, 2022, the Department mailed the February 18, 2022 administrative decision to claimant at claimant’s address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on that decision was March 10, 2022. Claimant did not file a request for hearing on either administrative decision until March 17, 2022. Accordingly, claimant’s requests for hearing were late.

Orders No. 22-UI-202794 and 22-UI-202757 each concluded that claimant failed to demonstrate good cause to extend the period to appeal each respective administrative decision by a reasonable time, and therefore claimant was not entitled to hearings on the merits of the administrative decisions. Order No. 22-UI-202794 at 3; Order No. 22-UI-202757 at 3. The record does not support those conclusions.

The record shows that at the time that the January 27, 2022 and the February 18, 2022 administrative decisions were mailed to claimant, she was living in temporary FEMA housing in White City because a wildfire had destroyed her home. The FEMA housing did not have a mailbox, which required claimant to use a mailbox located in a UPS Store in Medford, which was several miles away from White City. Additionally, during the months of January through March of 2022, claimant’s vehicle was broken down and, as a result, claimant was unable to use her vehicle to travel to Medford to check her mail. These were factors beyond claimant’s reasonable control that made it impossible for her to file timely appeals of the January 27, 2022 and the February 18, 2022 administrative decisions.

However, on March 17, 2022 claimant got a ride to Medford, was able to check her mail, and realized that the Department had sent her the January 27, 2022 and the February 18, 2022 administrative decisions. At that point, the factors beyond claimant’s control that had prevented her from filing timely appeals ceased to exist. On that same day, claimant filed her requests for hearings on the January 27, 2022 and the February 18, 2022 administrative decisions. Claimant therefore filed her requests for hearing within a seven-day “reasonable time” after the factors that prevented a timely filing ceased to exist. Accordingly, claimant established good cause to extend the deadline to file requests for hearing on the January 27, 2022 and the February 18, 2022 administrative decisions a reasonable time to March 17, 2022. Claimant’s late requests for hearing therefore are allowed, and claimant is entitled to hearings on the merits of the January 27, 2022 and the February 18, 2022 administrative decisions.

DECISION: Orders No. 22-UI-202794 and 22-UI-202757 are set aside, and these matters remanded for further proceedings consistent with these orders.

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

DATE of Service: December 9, 2022

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 22-UI-202794 or 22-UI-202757 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause either of these matters 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 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.

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.