

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0150

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On May 21, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible for PUA benefits starting December 27, 2020 because they failed to provide acceptable proof of employment or self-employment within the required time period. On June 10, 2021, the May 21, 2021 PUA determination became final without claimant having filed a request for hearing. On September 19, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on January 3, 2023 issued Order No. 23-UI-211420, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 17, 2023. On January 23, 2023, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 23-UI-211420 with the Employment Appeals Board (EAB). On January 26, 2023, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late. This matter comes before EAB based upon claimant's January 23, 2023 application for review of Order No. 23-UI-211420.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the appellant questionnaire response claimant provided with their application for review, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit will remain in the record.

FINDINGS OF FACT: (1) Over the years, claimant had experienced problems regarding mail either not being delivered to their P.O. Box address or becoming lost or stolen before they could retrieve it. Exhibit 2 at 2.

(2) On May 21, 2021, the Department mailed the May 21, 2021 PUA determination to claimant's address on file with the Department, which was claimant's P.O. Box address. The May 21, 2021 PUA determination stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than June 10, 2021." Exhibit 1 at 2.

(3) Claimant never received the May 21, 2021 PUA determination. EAB Exhibit 1 at 4.

(4) In September 2022, claimant received an administrative decision assessing an overpayment of PUA benefits based, in part, on the May 21, 2021 PUA determination.

(5) On September 19, 2022, claimant contacted the Department about the overpayment decision and a representative informed them of the existence of the May 21, 2021 PUA determination and their right to appeal it. On the same day, claimant filed a late request for hearing on the May 21, 2021 PUA determination.

CONCLUSIONS AND REASONS: Order No. 23-UI-211420 is reversed, claimant's late request for hearing is allowed, and a hearing on the merits of the May 21, 2021 PUA determination is 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. "Good cause" does not include not understanding the implications of a decision when it is received. OAR 471-040-0010(1)(b)(B).

The request for hearing on decision the May 21, 2021 PUA determination was due by June 10, 2021. Because claimant did not file their request for hearing until September 19, 2022, the request was late.

Claimant did not receive the May 21, 2021 PUA determination in the mail because the decision was either not delivered to their P.O. Box address or was lost or stolen before they could retrieve it. As a result, claimant did not learn of the existence of the PUA determination and their right to appeal it until September 19, 2022, the day they called the Department. Thus, claimant's failure to file a request for hearing by the June 10, 2021 deadline was the result of a factor beyond their reasonable control. On September 19, 2022, when claimant learned of the existence of the PUA determination and their right to appeal it, the factor beyond claimant's control ceased to exist. On the same day that the factor ceased to exist, claimant filed a request for hearing. Claimant therefore filed their request for hearing within a seven-day reasonable time after the factor that prevented a timely filing ceased to exist. Accordingly, claimant established good cause to extend the deadline to file a request for hearing on the May 21, 2021 PUA determination to September 19, 2022. Claimant's late request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of the May 21, 2021 PUA determination.

DECISION: Order No. 23-UI-211420 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: March 3, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-211420 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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