

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0578

Reversed
Late Requests for Hearing Allowed
Merits Hearings Required

PROCEDURAL HISTORY: On July 20, 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 effective December 27, 2020. On August 9, 2021, the July 20, 2021 PUA determination became final without claimant having filed a request for hearing. On September 13, 2022, the Department served notice of an administrative decision based in part on the July 20, 2021 PUA determination, concluding that claimant received \$2,050 in PUA and \$3,000 in Federal Pandemic Unemployment Compensation (FPUC) benefits to which she was not entitled and must repay (decision # 131709). On October 3, 2022, decision # 131709 became final without claimant having filed a request for hearing.

On January 17, 2023, claimant filed late requests for hearing on the July 20, 2021 PUA determination and decision # 131709. On May 4, 2023, ALJ Janzen conducted hearings, and on May 5, 2023 issued Orders No. 23-UI-224095 and 23-UI-224097, dismissing claimant's late requests for hearing on the July 20, 2021 PUA determination and decision # 131709, and leaving those administrative decisions undisturbed. On May 19, 2023, claimant filed applications for review of Orders No. 23-UI-224095 and 23-UI-224097 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-224095 and 23-UI-224097. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0578 and 2023-EAB-0579).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision. Claimant's argument contained information that was not part of the hearing record. However, claimant has shown that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing. EAB therefore considered the additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). Claimant's written argument 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) On July 20, 2021, the Department mailed the July 20, 2021 PUA determination to claimant’s address on file with the Department. The July 20, 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 by August 9, 2021.” Order No. 23-UI-224095, Exhibit 1 at 2.

(2) On September 13, 2022, the Department mailed decision # 131709 to claimant’s address on file with the Department. Decision # 131709 stated, “If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before October 3, 2022 to be timely.” Order No. 23-UI-224097, Exhibit 1 at 2. Decision # 131709 also stated, in relevant part, “The Employment Department may waive recovery of the overpaid benefits for a period of time.” Order No. 23-UI-224097, Exhibit 1 at 2.

(3) Prior to November 2020, claimant was experiencing housing insecurity as a result of the COVID-19 pandemic and the resulting loss in income. In November 2020, claimant moved in with her boyfriend in a yurt in a “remote off-grid location” that was more than an hour drive from her mailing address on file with the Department. EAB Exhibit 1 at 1. Afterwards, claimant’s boyfriend became abusive, and claimant suffered “memory and cognitive” impairments resulting from “multiple concussions” she suffered. EAB Exhibit 1 at 2. Claimant eventually moved away from her boyfriend and into a women’s shelter, and later experienced homelessness. Claimant was unable to regularly check her mail during this time, and generally checked her mail about once per month, or whenever she was able to. Order No. 23-UI-224097, Transcript at 14.

(4) In December 2022, claimant secured stable housing. At that time, she was “able to sort through [her] mail.” EAB Exhibit 1 at 2.

(5) On December 12, 2022 and January 9, 2023, the Department processed two requests for overpayment waivers that claimant had submitted to the Department. The Department subsequently denied claimant’s waiver requests. After claimant received the first waiver denial, she called the Department for help, and a representative advised her to apply for another waiver. Order No. 23-UI-224095, Transcript at 14. After claimant received the second waiver denial, she called the Department for help again. At that point, a representative explained to claimant how she could file a request a hearing. Claimant filed her requests for hearing on the July 20, 2021 PUA determination and decision # 131709 the same day.

CONCLUSIONS AND REASONS: Orders No. 23-UI-224095 and 23-UI-224097 are reversed and these matters remanded for a hearing on the merits of the July 20, 2021 PUA determination and decision # 131709.

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 requests for hearing on the July 20, 2021 PUA determination and decision # 131709 were due by August 9, 2021 and October 3, 2022, respectively. Because claimant did not file her requests for hearing until January 17, 2023, the requests were late. However, the record shows that claimant had good cause for filing the late requests for hearing.

At hearing, claimant testified that she “might have missed” earlier mailings from the Department, as she believed them to be junk mail, but ultimately realized that she had been assessed an overpayment when she opened a “letter” from the Department in October 2022. Order No. 23-UI-224095, Transcript at 11–12. Without other contributing factors, this would not likely qualify as factors or circumstances beyond claimant’s reasonable control which prevented her from filing timely requests for hearing. As claimant explained in her written argument, however, both of the administrative decisions at issue here were issued during a time when claimant was housing-insecure, in an abusive relationship which left claimant with physical injuries and cognitive impairments, and was unable to regularly check her mail. The totality of the evidence here suggests that, more likely than not, claimant did not possess the capacity to file requests for hearing on either of the decisions at issue during this time. This was a factor beyond claimant’s reasonable control that prevented her from filing timely requests for hearing.

Further, while claimant’s housing situation stabilized in December 2022, at that time she filed only a request for waiver of the overpayment assessed by decision # 131709, rather than a request for hearing on that decision (or the PUA determination that led to the overpayment). In her written argument, claimant asserted that “[i]t wasn’t clear at that time that [she] should have also requested a hearing, but [her] intent was to get a fair hearing of [her] case.” EAB Exhibit 1 at 2. When viewed in light of claimant’s cognitive deficits that resulted from her concussions, it is reasonable to conclude that claimant was likely unable to distinguish between filing an appeal on the overpayment decision (or the PUA determination that led to the overpayment) and filing a request for waiver of the overpayment itself. Thus, at that point, claimant failed to file a request for hearing due to her inability to follow directions despite substantial efforts to comply, which constitutes an excusable mistake.

Likewise, after claimant’s first waiver request was denied, a Department representative advised claimant to file another waiver request, rather than explaining her appeal rights to her. It was not until after claimant’s second waiver request was denied that a Department representative explained the appeal process to her. Because claimant reasonably relied on the Department’s representative in guiding her towards filing another waiver request rather than, or in addition to, requests for hearing, claimant’s failure to file requests for hearing at that time was also the result of an excusable mistake.

Thus, the factors that prevented claimant from filing requests for hearing on the two administrative decisions at issue here did not cease until the Department representative advised claimant of her appeal rights. Because claimant filed her requests for hearing the same day, claimant filed them within the seven-day “reasonable time” period after the factors which prevented her timely filings ceased.

For the above reasons, claimant had good cause for failing to file timely requests for hearing on the July 20, 2021 PUA determination and decision # 131709, and filed her late requests for hearing within a reasonable time. Claimant’s late requests for hearing on the July 20, 2021 PUA determination and

decision # 131709 therefore are allowed, and claimant is entitled to hearings on the merits of those decisions.

DECISION: Orders No. 23-UI-224095 and 23-UI-224097 are set aside, as outlined above.

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

DATE of Service: June 28, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 23-UI-224095 and 23-UI-224097 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these matters 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

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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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